

# **NASSAU HEALTH CARE CORPORATION**

## **NASSAU UNIVERSITY MEDICAL CENTER**

**2201 Hempstead Turnpike  
East Meadow, NY 11554**

### **Request for Expression of Interest**

#### **SUPPLEMENTAL COVERAGE ASSIGNMENTS FOR NASSAU HEALTH CARE CORPORATION INTERNAL MEDICINE ADMISSIONS**

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#### **Anticipated Schedule:**

- **Issue RFI** **August 24, 2009**
- **Curriculum Vitae Due** **Applications will be accepted on a rolling basis until the later of December 31, 2009 or such time as the Nassau Health Care Corporation determines a need no longer exists.**
- **Interviews, if required** **To be determined.**
- **Start Date** **October 1, 2009**

**Dates indicated above are subject to change at the sole discretion of Nassau Health Care Corporation.**

## **SCHEDULE A**

### **DESCRIPTION OF SERVICES SOUGHT**

**Please read the full text of the Request for Expression of Interest (“RFI”) to which this Schedule is attached for important information concerning the terms of this RFI and additional required information.**

#### **1. Introduction**

The Nassau Health Care Corporation (“NHCC”, or the “Corporation”) is an integrated 1200 bed health care delivery system, which includes a 530 bed tertiary care teaching hospital (Nassau University Medical Center (“NUMC”)), a 589-bed skilled nursing facility (A. Holly Patterson Extended Care Facility), and a network of Community Health Centers. NHCC is committed to providing high quality, personalized, culturally sensitive, and evidence-based care to medically underserved populations in Nassau County.

#### **2. Background**

NUMC’s daily Emergency Department (“ED”) admissions into its Internal Medicine hospitalist service varies significantly by day during each month. This has led to extremely high patient census levels for the five (5) teaching teams that currently provide hospitalist services for ED medicine admissions at NUMC. New Residency Review Committee program requirements, effective July 1, 2009, limit the number of patients managed by a teaching team at twenty (20) patients per day (the “teaching team cap”). Prior to July 1, 2009, had this limit been in effect it would have been exceeded at numerous times during a typical month.

NUMC’s Internal Medicine Department has identified and is in the process of implementing several changes to address the high degree of variability in the patient census and to provide hospitalist coverage for the patient care peaks (admissions in excess of the teaching team cap) resulting from unpredictable ED admissions. One of the changes being implemented is to add a new non-teaching hospitalist team (the “Magenta Team”) to the coverage schedule and to increase the utilization of Supplemental Coverage Physicians (defined below) in providing hospitalist service coverage in tandem with the Magenta Team. The Magenta Team will take the ED admissions each night (and the following morning) after the teaching team that is on-call for the day (starting at 4:00 PM) caps out at ten (10) new medicine admissions from the ED or reaches its teaching team cap of twenty (20) patients (“overflow patients”).

The Magenta Team will provide 24-hour, 7-day-a-week coverage for the overflow patients who are not admitted into a teaching service. The night physician on the Magenta Team will be employed by NUMC and will work each day from 8:00 PM to 8:00 AM. That physician will process and admit the ED patients from the point that the teaching team that is on-call caps out (typically around 8:00 PM). Those overflow patients admitted by the night physician on the Magenta Team will be handed off to Supplemental Coverage Physician(s) between 7:00 - 8:00 AM the following morning. The Supplemental Coverage Physicians will be selected and a schedule will be set in advance on a blind rotating basis. The Supplemental Coverage Physician(s) will be responsible for managing and providing care for those admissions until discharged. The Magenta Team will have access to the hospital’s nurse practitioners, physician assistants or other nursing staff assistance in accordance with normal hospital standards to assist them in providing coverage and patient care support throughout the day. It is anticipated that no

individual Supplemental Coverage Physician will be asked to provide coverage for more than ten (10) new patients per each on-call day, and, that no individual Supplemental Coverage Physician will have more than twenty (20) patients in their daily census. It is also anticipated that there will be more than one Supplemental Coverage Physician assigned to each day for primary and secondary on-call coverage.

NUMC is seeking qualified, community-based, private practice physicians or physician groups to submit their qualifications and interest in functioning as a daytime supplemental coverage physician on the Magenta Team on a rotating on-call basis (the “Supplemental Coverage Physician”). The purpose of this arrangement is to provide NUMC with flexible and supplemental physician coverage capacity for those times during each month when the daily patient census at NUMC exceeds the number of patients that can be handled by its hospitalist teaching service. A detailed list of responsibilities and activities is set forth below. NUMC will enter into Coverage and Patient Care Agreements with participating physician groups or physicians. Supplemental Coverage Physicians will be compensated for their coverage and patient care activities first, by independently billing patients and third party payors for any clinical services rendered to the patients admitted into the service. In consideration for providing on-call overflow coverage capacity to NUMC, and providing clinical services to indigent and uninsured patients of NUMC, Supplemental Coverage Physicians will be compensated by NUMC in accordance with the Medicare Physician Fee Schedule for services provided to indigent and uninsured patients. Supplemental Coverage Physicians will receive no compensation if they are on-call but do not receive a call. Please review the information requested as part of this RFI.

The term “Supplemental Coverage Physician” shall also mean a voluntary, community-based, private practice physician licensed to practice in the State of New York who is an active member of the NUMC Medical Staff and who has agreed to provide supplemental coverage in the Department of Medicine in the manner described herein. Please note that the term “Supplemental Coverage Physician” shall ***not*** include a physician currently employed by NHCC.

### **3. Scope of Services**

The Scope of Services (“Scope”) outlined below has been established for the purpose of achieving and implementing program goals and objectives described in this document. The statements below are intended to describe the general nature and level of work to be performed by the Supplemental Coverage Physician. The statements are not to be construed as an exhaustive list of all qualifications, responsibilities and duties of the Supplemental Coverage Physician.

NHCC will select a number of individual practitioners or groups to provide on-call hospitalist services on a rotating basis on days designated by NHCC.

1. The Supplemental Coverage Physician shall be available at 7:00 AM EST;
2. The Supplemental Coverage Physician should not be on-call at any other facility on the day they are scheduled to be on-call at NUMC (the Supplemental Coverage Physician shall promptly notify NHCC of any scheduling conflicts so that another Supplemental Coverage Physician can be assigned);
3. If the Supplemental Coverage Physician is a group, a specific physician must be identified who will be readily available to come onto the premises on the call day designated for the group;
4. The Supplemental Coverage Physician shall be notified by NUMC no later than 6:00 AM EST of the morning of the designated call day if there are one or more overflow patients requiring care;

5. Any patient assigned to a Supplemental Coverage Physician will be followed by such Supplemental Coverage Physician through discharge regardless of the patient's ability to pay for the care;
6. The Supplemental Coverage Physician will be responsible for the discharge of the patients assigned and all discharges will occur before 11:00 AM EST of any given day;
7. The Supplemental Coverage Physician must be present on premises if there is a turnover of patients or discharge is required;
8. The Supplemental Coverage Physician must respond to a call with thirty (30) minutes of receiving such call;
9. The Supplemental Coverage Physician will document services provided in a timely manner for all patients seen under this arrangement;
10. Supplemental Coverage Physicians will cooperate with NUMC Case Management Staff and participate in the initiatives of NUMC Risk Management and Performance Improvement Committees on issues such as discharge planning, utilization issues and review of observation patients. Failure to do so at any time will lead to exclusion from the schedule; and
11. Supplemental Coverage Physicians who do not observe the protocols stated in this section will be removed from the on-call rotation list.

#### **4. Minimum Qualifications**

The Supplemental Coverage Physician must:

1. Hold a unrestricted license and current registration to practice medicine in the State of New York;
2. Be Board Certified in Internal Medicine or Board Certified Family Practice;
3. Be in good standing in the Medicare and Medicaid programs with the ability to provide services to Medicare and Medicaid beneficiaries, and accept assignment from such Medicare and Medicaid beneficiaries;
4. Hold and maintain a current controlled substance registrations issued by the New York State Department of Health and the Drug Enforcement Agency (DEA) certification; and
5. Be or become an active member of the NHCC medical staff.

# **NASSAU HEALTH CARE CORPORATION REQUEST FOR EXPRESSION OF INTEREST**

## **I. Proposal/Process To Be Followed**

NHCC is requesting curriculum vitae for the services described in this Request for Expression of Interest (“RFI”). Submissions shall be prepared and submitted as outlined below; submissions that do not conform to these requirements may be disqualified.

This RFI is available to interested parties through the NHCC office designated above. It may also be downloaded by clicking on the “Procurement” link found on the NHCC website at [www.numc.edu](http://www.numc.edu). All requests for information concerning this RFI should be directed to the contact office designated on the cover page in writing by the due date for information requests specified above, or if no date is specified, SEVEN (7) business days prior to the due date for submission.

All physicians responding to this RFI must submit **FOUR (4) COPIES** of their curriculum vitae to the NHCC contact person. Electronic or facsimile submissions will not be accepted.

**ONE (1) ADDITIONAL COPY** of the curriculum vitae should be submitted to:

Nassau Health Care Corporation  
Department of Legal Affairs – Box 6  
2201 Hempstead Turnpike  
East Meadow, NY 11554

**Each submission must include the forms attached in Appendix I to this RFI.** Applicants will be notified only if they have been selected following completion of NHCC’s evaluation of submissions received. The physician selected to be a Supplemental Coverage Physician will then be presented with a Coverage and Patient Care Agreement, which agreement shall in form and substance be uniform for all Supplemental Coverage Physicians. If a selected physician cannot agree to the terms and conditions of the Coverage and Patient Care Agreement within a reasonable time, NHCC will select the next available physician to have expressed an interest.

Submissions are to be prepared in such a way as to provide a straightforward, concise description of capabilities to satisfy the requirements of this RFI. Expensive bindings, colored displays, promotional materials, etc., are neither necessary nor desired. Emphasis should be concentrated on conformance to the RFI instructions, responsiveness to the RFI requirements, and on completeness and clarity of content.

## **II. Contents of Responses**

- A. Name of the physician.
- B. Contact information, including address, phone and fax numbers, e-mail address and other contact information.
- C. Background information regarding the physician or if a group, the group member that will be providing coverage, including:
  - 1. Education
  - 2. Employment history
  - 3. History of the physician's practice and a description of all services it provides.
  - 4. A description of the physician's existing business operations, including number of employees by discipline.
  - 5. Qualifications and experience of the physician specifically related to the services contemplated by this RFI.
  - 6. Detailed information of any changes in the mode of conducting the physician's business, including bankruptcy proceedings or filings, and merges or acquisitions within the past three (3) years.
  - 7. List of any bankruptcy proceedings in the past ten (10) years initiated by or against the physician or any affiliate or related entity.
  - 8. At least three business references (including names of individuals, their titles, organizations, mailing addresses, telephone and fax numbers, and e-mail addresses).
  - 9. Information concerning any material negative findings, sanctions imposed or pending regulatory or legal proceedings.
  - 10. Submissions must include the following:
    - a. List of any and all criminal convictions within the last (10) ten years rendered against the physician, any officer or director thereof, or any affiliate or related entity.
    - b. List of any and all civil penalties, judgments, consent decrees, violations, Statements of Deficiency or other sanctions within the last ten (10) years rendered against the applicant, any officer or director thereof, or any affiliate or related company.
    - c. List of any and all current investigations, indictments or pending litigation by any Federal, State or local jurisdiction initiated against

the applicant, any officer or director thereof, or any affiliate or related company.

- d. List of any and all actions occurring with the last ten (10) years which have resulted in revocation or suspension of any permit or authority to do business in any Federal, State, or local jurisdiction, by the applicant, any officer or director thereof, or any affiliate or related company.
- e. List of any and all actions occurring in the past ten (10) years that have resulted in the barring from public proposal submission of the applicant, any officer or director thereof, or any affiliate or related company.

11. List your general liability and professional liability insurance coverage, any contingencies or conditions on your submission, Information required in Appendix I to this RFEI.

**D. Conflict of Interest**

1. Please disclose:

a. Any material financial relationship that you or any member of your group has with any entity that may create a conflict of interest or the appearance of a conflict of interest in acting as a Supplemental Coverage Physician at NHCC.

b. Any family relationship that you or any member of your group has with any corporation, individual or other entity that may create a conflict of interest or the appearance of a conflict of interest in acting as a Supplemental Coverage Physician to NHCC.

c. Any other matter that you or any member of your group believes may create a conflict of interest or the appearance of a conflict of interest in acting as a Supplemental Coverage Physician for NHCC.

2. Please describe any procedures you either have, or would adopt, to assure NHCC that a conflict of interest would not exist in the future.

**III. Confidential Information**

The New York State “Freedom of Information Law,” Public Officers Law Article 6, permits access to government records and may permit public access to curriculum vitae submitted in response to this RFI.

**IV. Affirmative Action**

It is the policy of NHCC to comply with all federal, state and local laws, policies, orders, rules and regulations which prohibit unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability, or marital status, and to take affirmative action in working with contracting parties to ensure that Minority and Women-owned Business Enterprises (MWBEs), Minority Group Members and women

share in the economic opportunities generated by NHCC's participation in projects or initiatives, and/or use of NHCC funds. NHCC's non-discrimination and affirmative action policy will apply to this initiative. MWBEs are encouraged to respond.

**V. Procurement Law Requirements**

State Finance Law §§ 139-j and 139-k (collectively, the "Procurement Requirements") apply to this RFI. The Procurement Requirements (1) govern permissible communications between potential respondents and NHCC with respect to this RFI during the procurement process; and (2) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this solicitation.

Compliance with the Procurement Requirements requires that (a) all communications regarding this RFI, from the issuance of this RFI through final award and approval of any resulting contract (the "Restricted Period"), be conducted only with the contact person(s) listed; (b) the completion by respondents of the Disclosure of Prior Non-Responsibility Determinations and the Affirmation of Understanding of and Agreement pursuant to State Finance Law, copies of which are attached to this RFI as attachments to Appendix I, and (c) periodic updating of such forms during the terms of any contract resulting from this RFI. Respondents must submit both of these forms, properly completed, as part of their submissions. The Procurement Requirements also require NHCC employees to obtain and report certain information when contacted by prospective bidders during the Restricted Period, make a determination of the responsibility of bidders and make all such information publicly available in accordance with applicable law. If a prospective bidder is found to have knowingly and willfully violated the State Finance Law provisions, that prospective bidder and its subsidiaries, related or successor entities will be determined to be a non-responsible bidder and will not be awarded any contract issued pursuant to this RFI.

A copy of the State Finance Law Sections 139-j and 139-k can be found at <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html>. All potential respondents are solely responsible for full compliance with the Procurement Requirements.

**VI. Selection Criteria**

Submissions from responsible parties will be reviewed and evaluated from the point of view of qualifications, references and other appropriate factors relevant to: (i) the physician's ability to provide the services; and (ii) the anticipated quality of the services to be provided.

**VII. Terms and Conditions**

A. This RFI constitutes an invitation to submit curriculum vitae to NHCC. Accordingly, this RFI does not commit NHCC to award a contract, or to procure, or to contract for services or supplies. Notwithstanding any other provisions of this RFI, NHCC reserves the right to award this contract to the physicians that best meet the requirements of the RFI. NHCC reserves the right to accept or reject any or all submission received as a result of this request; or to cancel in part or in its entirety this RFI if it is in the interests of NHCC to so do. NHCC

reserves and, in its sole discretion, may exercise any or all of the following rights and options with respect to this RFI, any submissions and any related agreements, without incurring any liability to a submitting physician:

1. NHCC reserves the right to disqualify any and all submissions that fail to meet the requirements specified in this RFI.
  2. NHCC reserves the right to determine whether to interview some or all of the submitting physicians, and to conduct such interviews privately.
  3. NHCC reserves the right to select and enter into a contract with the submitting physicians whose submission best satisfies NHCC's overall interests. NHCC's decision-making and selection process will be discretionary and will be based on a variety of factors.
  4. NHCC reserves the right to waive or extend deadlines.
  5. NHCC reserves the right to accept submissions in whole or part.
  6. NHCC reserves the right to conduct investigations with respect to the qualifications of each physician, to make field investigations with respect to such submissions (including visits to the physician's business offices or field operations).
  7. NHCC reserves the right to request additional information from any physician and to rely upon any information obtained through NHCC's own investigations.
  8. NHCC reserves the right to cancel this RFI at any time whatsoever, with or without the substitution of another RFI.
  9. NHCC reserves the right to supplement, amend or otherwise modify this RFI.
  10. NHCC reserves the right to issue additional or subsequent RFIs with regard to the subject matter of this RFI.
  11. NHCC offers this RFI on a non-negotiable basis.
- B. Preparation of a response to this RFI will be at the cost, expense and risk of the submitting physician, with the express understanding and agreement of the submitting physician, irrespective of whether s/he is selected, that s/he waives all claims whatsoever for reimbursement from NHCC for any cost or expense incurred in the preparation of his/her submission and any subsequent contract negotiation.
- C. Each and every submitting physician expressly understands and agrees that this RFI is not, and shall not be construed as, an offer or an enforceable contract.
- D. NHCC intends to enter into a uniform contract with the physician selected, which contract shall include, without limitation, the standard clauses set forth in Schedule "B" attached hereto. This RFI and the submission, or any part thereof,

may be incorporated into and made a part of the contract. The contract may contain provisions not contained herein.

The contract shall constitute the entire agreement between NHCC and the selected Supplemental Coverage Physician, and shall set forth all the terms and conditions applicable to the subject matter of this RFI. In the event of a conflict between this RFI and that contract, that contract shall control.

- E. This RFI shall be construed in accordance with and governed by the laws of the State of New York, without regard to conflicts of law principles. All actions or proceedings relating, directly or indirectly, to this RFI shall be litigated only in courts located within Nassau County or in the United States District Court for the Eastern District of New York. Each physician (by virtue of the submission of its curriculum vitae), submits itself, its successors and/or assigns (if any) to the personal jurisdiction of such court, and waives any right to trial by jury.
- F. All submissions become the property of NHCC. By submitting a curriculum vitae, the submitting physician agrees not to make any claims for or have any right to damages because of any misunderstanding, misrepresentation or lack of information.

## **SCHEDULE “B” - STANDARD CLAUSES FOR NHCC CONTRACTS**

NHCC reserves the right to add, subtract or modify clauses as it deems appropriate. For purposes of this Schedule B, the term “Contractor” shall mean “Supplemental Coverage Physician”.

### **1. Payments**

(a) Vouchers; Voucher Review, Approval and Audit. Payments shall be made to CONTRACTOR in arrears, subject to compliance with NHCC billing/payment procedures, and contingent upon CONTRACTOR submitting an invoice accompanied by documentation satisfactory to NHCC supporting the amount claimed.

(b) Timing of Payment Claims. CONTRACTOR shall submit claims no later than three (3) months following the NHCC’s receipt of the services that are the subject of the claim and no more frequently than once a month.

(c) No Duplication of Payments. Payments under this Agreement shall not duplicate payments for any work performed or to be performed under other agreements between the CONTRACTOR and any funding source, including NHCC.

(d) Payments in Connection with Termination or Notice of Termination. Unless a provision of this Appendix expressly states otherwise, payments to CONTRACTOR following the termination of this Agreement shall not exceed payments made as consideration for services that were (i) performed prior to termination, (ii) authorized by this Agreement to be performed, and (iii) not performed after CONTRACTOR received notice that the NHCC did not desire to receive such services.

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

### **3. Compliance with Laws and NHCC Policies.**

(a) Generally. CONTRACTOR shall comply with any and all applicable Federal, State and local Laws, including, but not limited to those relating to conflicts of interest, human rights, and disclosure of information, in connection with its performance under this Agreement. As used in this Agreement the word “Law” includes any and all statutes, local laws, ordinances, rules, regulations, applicable orders, and/or decrees, as the same may be amended from time to time, enacted, or adopted. In addition, CONTRACTOR shall follow all requirements of NHCC policies, procedures, quality assurance measures and performance improvement programs, including sentinel events/occurrences. Furthermore, CONTRACTOR shall maintain compliance with applicable standards of accreditation programs as required by NHCC, including, without limitation, The Joint Commission.

(b) Records Access. The parties acknowledge and agree that all records, information, and data (“Information”) acquired in connection with performance or administration of this Agreement shall be used and disclosed solely for the purpose of performance and administration of the contract or as required by law. CONTRACTOR acknowledges that CONTRACTOR Information in NHCC’s possession may be subject to disclosure under Article 6 of the New York State Public Officer’s Law (“Freedom of Information Law” or “FOIL”). In the event that such a request for disclosure is made, NHCC shall make reasonable efforts to notify CONTRACTOR of such request prior to disclosure of the Information so that CONTRACTOR may take such action as it deems appropriate.

(c) Protection of Information. CONTRACTOR acknowledges and agrees that all information that CONTRACTOR acquires in connection with performance under this Agreement shall be strictly confidential, used solely for the purpose of performing services to or on behalf of NHCC and shall not be disclosed to third parties except (i) as permitted under this Agreement, (ii) with the written consent of NHCC (and then only to the extent of the consent), or (iii) upon legal compulsion. In furtherance of the forgoing, CONTRACTOR and its employees, partners and agents shall keep the confidentiality of medical records and/or information including, but not limited to, HIV related information, relating to the care and treatment of NHCC patients, that may be obtained by CONTRACTOR in the performance of its duties hereunder, and shall maintain the confidentiality of all such records and information including, but not limited to, HIV related information, in conformity and consistent with applicable policies and standards of The Joint Commission, the confidentiality requirements of the New York State Public Health Law (“PHL”) and the regulations promulgated thereunder, including, but not limited to, PHL Section 2782, and 10 NYCRR 415.22 and Parts 24 and 63 or as same may, from time-to-time, be amended as well as any other state and federal regulation regarding patient confidentiality, including, but not limited to, the regulations pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). **If applicable, CONTRACTOR further agrees to maintain and safeguard the confidentiality of health information relating to NHCC patients in accordance with the provisions a Business Associate Agreement.** In the event of a breach by CONTRACTOR of this provision, NHCC may, at its option, terminate this Agreement immediately upon written notice to CONTRACTOR. The provisions of this paragraph shall survive this Agreement.

(d) Patient Care/Contact. In the event that the services to be provided by CONTRACTOR or a CONTRACTOR Agent under this Agreement involve patient care or contact, CONTRACTOR acknowledges and agrees that all individuals performing such services shall: (i) be in good health and comply with all applicable health, immunization and infection control standards required of NHCC employees and (ii) be subject to successful completion of a background investigation substantially similar to those required of NHCC employees. CONTRACTOR represents and warrants that it is not aware of the existence of any facts or circumstances that indicate it would be inappropriate for such individuals to perform services under this Agreement. NHCC reserves the right to charge a CONTRACTOR a reasonable fee for costs associated with performing health services and/or background investigations necessary to ensure compliance with this paragraph.

(e) NHCC Compliance Programs. CONTRACTOR agrees to adhere, and cooperate fully with, NHCC’s corporate compliance program requirements applicable to all NHCC vendors, contractors, consultants and agents. This information is available via NHCC’s website at: <http://www.numc.edu/htms/procurement.htm>.

4. Minimum Service Standards. Regardless of whether required by Law:

(a) CONTRACTOR shall, and shall cause CONTRACTOR Agents to, conduct its, his or her activities in connection with this Agreement so as not to endanger or harm any Person or property.

(b) CONTRACTOR shall deliver services under this Agreement in a professional manner consistent with the best practices of the industry in which the CONTRACTOR operates. CONTRACTOR shall take all actions necessary or appropriate to meet the obligations described in the immediately preceding sentence, including obtaining and maintaining, and causing all CONTRACTOR Agents to obtain and maintain, all approvals, licenses, and certifications (“Approvals”) necessary or appropriate in connection with this Agreement.

5. Indemnification; Defense; Cooperation.

(a) CONTRACTOR shall be solely responsible for and shall indemnify and hold harmless NHCC and its officers, employees, and agents (the “Indemnified Parties”) from and against any and all liabilities, losses, costs, expenses (including, without limitation, attorneys’ fees and disbursements) and damages (“Losses”), arising out of or in connection with any acts or omissions of CONTRACTOR or a CONTRACTOR Agent, regardless of whether due to negligence, fault, or default, including Losses in connection with any threatened investigation, litigation or other proceeding or preparing a defense to or prosecuting the same; provided, however, that CONTRACTOR shall not be responsible for that portion, if any, of a Loss that is caused by the negligence of NHCC.

(b) CONTRACTOR shall, upon the NHCC’s demand and at the NHCC’s direction, promptly and diligently defend, at CONTRACTOR’S own risk and expense, any and all suits, actions, or proceedings which may be brought or instituted against one or more Indemnified Parties for which CONTRACTOR is responsible under this Section, and, further to CONTRACTOR’S indemnification obligations, CONTRACTOR shall pay and satisfy any judgment, decree, loss or settlement in connection therewith.

(c) CONTRACTOR shall, and shall cause CONTRACTOR Agents to, cooperate with NHCC in connection with the investigation, defense or prosecution of any action, suit or proceeding in connection with this Agreement, including the acts or omissions of CONTRACTOR and/or a CONTRACTOR Agent in connection with this Agreement.

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

6. Insurance.

(a) Types and Amounts. CONTRACTOR shall obtain and maintain throughout the term of this Agreement, at its own expense: (i) one or more policies for commercial general liability insurance, which policy(ies) shall name “Nassau Health Care Corporation” as an additional insured and have a minimum single combined limit of liability of not less than One Million (\$1,000,000) Dollars per occurrence and Three Million (\$3,000,000) Dollars aggregate coverage, (ii) if contracting in whole or part to provide professional services, one or more policies for professional liability insurance, which policy(ies) shall have a minimum single combined limit liability of not less than One Million (\$1,000,000) Dollars per occurrence and Three Million (\$3,000,000) Dollars aggregate coverage, (iii) compensation insurance for the benefit of the CONTRACTOR’S employees (“Workers’ Compensation Insurance”), which insurance is in compliance with the New York State Workers’ Compensation Law, and (iv) such additional insurance as the NHCC may from time to time specify.

(b) Acceptability; Deductibles; Subcontractors. All insurance obtained and maintained by CONTRACTOR pursuant to this Agreement shall be (i) written by one or more commercial insurance carriers licensed to do business in New York State and acceptable to NHCC, and which is (ii) in form and substance acceptable to NHCC. CONTRACTOR shall be solely responsible for the payment of all deductibles to which such policies are subject. CONTRACTOR shall require any subcontractor hired in connection with this Agreement to carry insurance with the same limits and provisions required to be carried by CONTRACTOR under this Agreement.

(c) Delivery; Coverage Change; No Inconsistent Action. Prior to the execution of this Agreement, copies of current certificates of insurance evidencing the insurance coverage required by this Agreement shall be delivered to NHCC. Not less than thirty (30) days prior to the date of any expiration or renewal of, or actual, proposed or threatened reduction or cancellation of coverage under, any insurance required hereunder, CONTRACTOR shall provide written notice to NHCC of the same and deliver to NHCC renewal or replacement certificates of insurance. CONTRACTOR shall cause all insurance to remain in full force and effect throughout the term of this Agreement and shall not take or omit to take any action that would suspend or invalidate any of the required coverages. The failure of CONTRACTOR to maintain Workers' Compensation Insurance shall render this contract void and of no effect. The failure of CONTRACTOR to maintain the other required coverages shall be deemed a material breach of this Agreement upon which the NHCC reserves the right to consider this Agreement terminated as of the date of such failure.

7. No Arrears or Default. CONTRACTOR represents and warrants that it is not in arrears to NHCC upon any debt or contract and it is not in default as surety, contractor, or otherwise upon any obligation to NHCC, including any obligation perform services for or on behalf of NHCC.

8. Assignment; Amendment; Waiver; Subcontracting. This Agreement and the rights and obligations hereunder may not be in whole or part (i) assigned, transferred or disposed of, (ii) amended, (iii) waived, or (iv) subcontracted, without the prior written consent of the President of NHCC, his or her duly designated representative (the "President"), and any purported assignment, other disposal or modification without such prior written consent shall be null and void. The failure of a party to assert any of its rights under this Agreement, including the right to demand strict performance, shall not constitute a waiver of such rights.

9. Termination.

(a) Generally. This Agreement may be terminated (i) by NHCC, for any or no reason, upon thirty (30) days written notice to CONTRACTOR, (ii) for "Cause" by NHCC immediately upon the receipt by CONTRACTOR of written notice of termination, (iii) upon mutual written Agreement of NHCC and CONTRACTOR, and (iv) in accordance with any other provisions of this Agreement expressly addressing termination.

As used in this Attachment the word "Cause" includes: (i) a breach of this Agreement; (ii) the failure to obtain and maintain in full force and effect all Approvals required for the services described in this Agreement to be legally and professionally rendered; and (iii) the termination or impending termination of federal or state funding for the services to be provided under this Agreement.

(b) By CONTRACTOR. This Agreement may be terminated by CONTRACTOR if performance becomes impracticable through no fault of CONTRACTOR, where the impracticability relates to the CONTRACTOR'S ability to perform its obligations and not to a judgment as to convenience or the desirability of continued performance. Termination under this subsection shall be effected by CONTRACTOR delivering to President, at least sixty (60) days prior to the termination date (or a shorter period if sixty (60) days notice is impossible), a notice stating (i) that CONTRACTOR is terminating this Agreement in accordance with this subsection, (ii) the date as of which this Agreement will terminate, and (iii) the facts giving rise to CONTRACTOR'S right to terminate under this subsection. A copy of the notice given to the President shall be given to the NHCC department head who oversees the administration of this Agreement on the same day that notice is given to the President.

(c) CONTRACTOR Assistance upon Termination. In connection with the termination or impending termination of this Agreement, CONTRACTOR shall, regardless of the reason for termination, take all actions reasonably requested by NHCC (including those set forth in other provisions of this Agreement) to assist NHCC in transitioning CONTRACTOR 's responsibilities under this Agreement. The provisions of this subsection shall survive the termination of this Agreement.

10. Records Access and Retention. CONTRACTOR, including its satellites, offices and/or subcontractors, if any, shall maintain full and complete books and records of accounts specifically pertaining to this Agreement, in accordance with accepted accounting practices and such other records as may be reasonably prescribed by NHCC and the New York State Comptroller. Such books and records shall at all times be available for audit and inspection by the State Comptroller, or a duly designated representative, or by NHCC. All such books and records shall be retained for a period of six (6) years after the completion of all the services described in this Agreement. CONTRACTOR further agrees that if any provision of Section 952 of the Omnibus Reconciliation Act of 1980 (PL-96-499) is found by a body of competent jurisdiction to be applicable to this Agreement, CONTRACTOR will make available upon written request by the Secretary of Health & Human Services, or by the Comptroller General of the General Accounting Office, or any of their duly authorized representatives, a copy of this Agreement and any executed amendments thereto, documents which relate to the calculation of the charges in the Agreement and copies of service reports documenting services performed. Such records will be available in accordance with the above for a period of six (6) years after the furnishing of any of the services described in this Agreement.

11. Work Performance Liability. CONTRACTOR is and shall remain primarily liable for the successful completion of all work in accordance this Agreement irrespective of whether CONTRACTOR is using a CONTRACTOR Agent to perform some or all of the work contemplated by this Agreement, and irrespective of whether the use of such CONTRACTOR Agent has been approved by NHCC.

12. Consent to Jurisdiction and Venue; Governing Law.

(a) Unless otherwise required by Law, exclusive original jurisdiction for all claims or actions with respect to this Agreement shall be in the Supreme Court in Nassau County in New York State and the parties expressly waive any objections to the same on any grounds, including venue and forum non conveniens. This Agreement is intended as a contract under, and shall be governed and construed in accordance with, the Laws of New York State, without regard to the conflict of laws provisions thereof.

(b) THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT

13. No Exclusions. CONTRACTOR warrants that neither it nor any of its officers, employees or agents is excluded from doing business with any federal, state or local agency, municipality or department. Any misrepresentation or false statement regarding CONTRACTOR'S status shall result in immediate termination of this Agreement.

14. Executory Clause. Notwithstanding any other provision of this Agreement:

(a) Approval and Execution. NHCC shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person unless (i) all NHCC approvals have been obtained, including, if required, approval by the NHCC Board of Directors, and (ii) this Agreement has been executed by the President.

(b) Availability of Funds. NHCC have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person beyond funds appropriated or otherwise lawfully available for this Agreement, and, if any portion of the funds for this Agreement are from the state and/or federal governments, then beyond funds available to NHCC from the state and/or federal governments.

## APPENDIX I

**REQUIRED DISCLOSURE OF INFORMATION: THE FORMS SET FORTH BELOW MUST BE FULLY COMPLETED AND RETURNED WITH A RESPONDING PHYSICIAN'S SUBMISSION. A SUBMISSION WILL NOT BE CONSIDERED COMPLETE WITHOUT SUBMISSION OF THIS ATTACHMENT.**

### **1. Contractor Disclosure of Contacts**

#### **Instructions:**

New York State Executive Order Number 127 (EO 127) provides for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions.

In the first instance, Section II, paragraph 1 of EO 127 obligates a covered agency or authority (*e.g.*, NHCC) to obtain identifying information on every person or organization retained, employed or designated by or on behalf of the contractor (*i.e.*, the "Physician" or "you") to attempt to influence the procurement process. NHCC is also obligated to collect information on whether such person or organization has a financial interest in the procurement.

Thereafter, Section II, paragraph 2 of EO 127 continues to obligate a covered agency or authority to obtain such identifying information on every person or organization subsequently retained, employed or designated by or on behalf of the Physician to attempt to influence the procurement process.

This form must be completed and submitted with your curriculum vitae in accordance with Executive Order Number 127 (EO 127). Failure to complete and submit this form shall result in a determination of non-responsiveness and disqualification of the bid, submission or offer. If at the time of submission of this form, the specific name of a person authorized to attempt to influence a decision on your behalf is unknown, you agree to provide the specific person's information when it is available. You also agree to update this information during the negotiation or evaluation process of this procurement, and throughout the term of any contract awarded to your company pursuant to this bid, submission or offer.

## Disclosure of Contacts Form

Name of Physician: \_\_\_\_\_

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

Name and Title of Person Submitting this Form: \_\_\_\_\_  
\_\_\_\_\_

Is this an initial filing in accordance with Section II, paragraph 1 of EO 127 or an updated filing in accordance with Section II, paragraph 2 of EO 127? (Please circle one):

Initial filing

Updated filing

The following person or organization was retained, employed or designated by or on behalf of the Physician to attempt to influence the procurement process:

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

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

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

Place of Principal Employment: \_\_\_\_\_

Occupation: \_\_\_\_\_

Does the above-named person or organization have a financial interest in the procurement?

(Please circle one)    yes                      no

## **2. Contractor Disclosure of Prior Non-Responsibility Determinations**

### **Instructions:**

New York State Executive Order Number 127 (EO 127) obligates a covered agency or authority to make a determination of responsibility of the proposed awardee for a procurement contract. EO 127 mandates consideration of whether a contractor has intentionally provided false or incomplete information under such Order within the last five years, and whether a contractor has failed to timely disclose accurate and complete information or otherwise cooperate in the implementation of the Order. For more information on responsibility determinations, please see the New York State Procurement Bulletin entitled “*Best Practices - Determining Vendor Responsibility*” issued by the New York State Procurement Council, May 1999, for more information on responsibility determinations. See <http://www.ogs.state.ny.us/procurecounc/pdfdoc/BestPractice.pdf>.



### **3. Contractor Certification of Compliance with Executive Order 127**

**Instructions:**

New York State Executive Order Number 127 (EO 127), section II, paragraph 7 requires that every procurement contract subject to its provisions contain a certification that all information provided to the soliciting agency or authority regarding EO 127 is complete, true and accurate.

## Contractor Certification of Compliance with Executive Order 127

Physician certifies that all information provided to NHCC with respect to Executive Order Number 127 is complete, true and accurate.

By: \_\_\_\_\_

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

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

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

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

\_\_\_\_\_

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