

REQUEST FOR PROPOSALS

RFP No:
HHSC FY19-0003

COMPETITIVE SEALED PROPOSALS
TO PROVIDE:

CHARGEMASTER SERVICES

For

Hawaii Health Systems Corporation

East Hawaii Region

Hilo Medical Center

1190 Waiianuenue Avenue

Hilo, Hawaii 96720

An Agency of the State of Hawaii

Proposal Due Date & Time:

No later than Thursday, September 6, 2018, 2:00 PM, HST

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OFFER

The undersigned Offeror hereby agrees to provide all services in accordance with the terms and requirements stated herein, including the proposal, all exhibits, amendments, and best and final offers (if any). Signature also acknowledges receipt of all pages indicated in the Table of Contents.

Hawaii State Tax License No.:

For clarification of this offer, contact:

Federal Employer Identification No.:

Name: _____

Phone: _____

E-Mail Address: _____

Fax: _____

Company Name

Signature of Person Authorized to Sign Offer

Address

Printed Name

City

State

Zip

Title

CERTIFICATION

By signature in the Offer section above, the offeror certifies:

The submission of the offer did not involve collusion or other anti-competitive practices.

The offeror shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246 and HRS Chapter 378.

The offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.

The Offeror certifies that the above referenced organization is/ is not a legislator, or an employee or a business in which a legislator or an employee has a controlling interest.

ACCEPTANCE OF OFFER (to be completed by HHSC)

Your offer, including the proposal, all exhibits, amendments, and best-and-final offer (if any), contained herein, is accepted.

The Contractor is now bound to provide all specified items listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc., and the Contractor's Offer as accepted by HHSC.

This contract shall henceforth be referred to as Contract No. 19-0003.

Awarded this _____ day of _____.

Signed: Dan Brinkman, East Hawaii Region Chief Executive Officer

SECTION 1

ADMINISTRATION

1.0 INTRODUCTION

This Request for Proposal (hereinafter “RFP”) is issued by the Hawaii Health Systems Corporation (hereinafter “HHSC”), a public body corporate and politic and an instrumentality and Agency of the State of Hawaii. This solicitation is governed by the provisions of East Hawaii Regional Procurement Policies & Procedures. All procedures and processes will be in accordance with East Hawaii Regional Procurement Policies. To the extent this solicitation contains any terms or provisions inconsistent with East Hawaii Regional Procurement Policies and its procedures, and governing law will control.

Thank you for your interest in submitting a proposal for this solicitation. The rationale for this competitive sealed RFP is to promote and ensure the fairest, most efficient means to obtain the **best value** to HHSC, i.e. the proposal offering the greatest overall combination of service and price, all of which shall be assessed in accordance with the established evaluation criteria established in this RFP. Hereinafter, organizations interested in submitting a proposal in response to this RFP shall be referred to as “OFFEROR”.

In order for HHSC to evaluate OFFEROR’S response in a timely manner, please thoroughly read this RFP and follow instructions as presented.

1.1 RFP TIMETABLE AS FOLLOWS

The timetable as presented represents HHSC’s best estimated schedule. If an activity of the timetable, such as “Closing Date for Receipt of Questions” is delayed, the rest of the timetable dates may be shifted. OFFEROR will be advised, by addendum to the RFP, of any changes to the timetable. Contract start date will be subject to the issuance of a Notice to Proceed.

ACTIVITY	SCHEDULED DATES
1. RFP Issued & Public Announcement	August 15, 2018
2. Closing Date for Receipt of Questions	August 28, 2018
3. Addendum - HHSC Response to Offerors’ Questions (if needed)	August 29, 2018
4. Closing Date for Receipt of Proposals	September 6, 2018 - No Later than 2:00 PM, HST
5. Mandatory Requirements Evaluation	September 6, 2018
6. Proposal Evaluations	September 6 – Sept. 11, 2018
7. Proposal Discussions (optional)	September 11 – 13, 2018
8. Best and Final Offers (optional)	September 14, 2018
9. Contractor Selection/Award Notification (on/about)	September 17, 2018
10. Contract Tentative Award Date	September 17, 2018
11. Contract Tentative Start Date	September 24, 2018

1.2 AUTHORITY

This RFP is issued under the provisions of the East Hawaii Regional Procurement Policies & Procedures. All OFFERORS are charged with presumptive knowledge of all requirements of the cited authorities. Submission of a valid executed proposal by any OFFEROR shall constitute admission of such knowledge on the part of such OFFEROR.

1.2.1 RFP ORGANIZATION

This RFP is organized into five sections:

SECTION 1: ADMINISTRATIVE

Provides information regarding administrative requirements.

SECTION 2: SCOPE OF SERVICES

Provides a detailed description of goods and/or services to be provided and delineates HHSC and CONTRACTOR responsibilities.

SECTION 3: PROPOSALS

Describes the required format and content for submission of a proposal.

SECTION 4: COMPENSATION & PRICING SCHEDULE

Provides the required format for submission of a pricing quote.

SECTION 5: EVALUATION

Describes how proposals will be evaluated and lists the “value weight percentages” of the evaluation categories.

SECTION 6: AWARD OF CONTRACT

Describes procedures for selection and award of contract.

1.3 HEAD OF PURCHASING AGENCY (HOPA)

The HOPA for HHSC, or designee, is authorized to execute any and all Agreements (Contracts), resulting from this RFP.

The HOPA for this RFP is:

Dan Brinkman
Chief Executive Officer
East Hawaii Region
Hawaii Health Systems Corporation

1.4 DESIGNATED OFFICIALS

The officials identified in the following paragraphs have been designated by the HOPA as HHSC’s procurement officials responsible for execution of this RFP, award of Agreement and coordination of CONTRACTOR’s satisfactory completion of contract requirements.

1.4.1 ISSUING OFFICER

The Issuing Officer is responsible for administrating/facilitating all requirements of the RFP solicitation process and is the **sole point of contact** for OFFEROR from date of public announcement of the RFP until the selection of the successful OFFEROR. The Issuing Officer will also serve as the Contract Manager responsible for contractual actions throughout the term of the contract. The Issuing Officer is:

Gary L. Callahan, Senior Contracts Manager
East Hawaii Region, HHSC
1190 Waianuenue Avenue, Hilo, HI 96720
Phone: (808) 932-3112 FAX: (808) 933-2793
Email: gcallahan@hhsc.org

1.5 HHSC ORGANIZATIONAL INFORMATION

1.5.1 CHARTER

HHSC is a public body corporate and politic and an instrumentality and agency of the State of Hawaii. HHSC is administratively attached to the Department of Health, State of Hawaii and was created by the legislature with passage of Act 262, Session Laws of the State of Hawaii 1996. Act 262 affirms the State's commitment to provide quality health care for the people in the State of Hawaii, including those served by small rural facilities.

1.5.2 STRUCTURE AND SERVICES

HHSC is organized into five operational regions and provides a broad range of healthcare services including acute, long term, rural and ambulatory health care services. As the fourth largest public health system in the country, HHSC is the largest provider of healthcare in the Islands, other than on Oahu. This Solicitation is being issued by the East Hawaii Region of HHSC which is made up of Hilo Medical Center in Hilo, HI, Hale Ho'ola Hamakua, in Honoka'a, HI and Ka'u Hospital located in Pahala, HI.

1.5.3 MISSION

The Mission of the East Hawaii Region: "Improving our community's health through exceptional and compassionate care."

1.6 FACILITY INFORMATION

Detailed information pertaining to East Hawaii Region facilities is located at:

<https://www.hilomedicalcenter.org/>.

1.7 SUBMISSION OF QUESTIONS

Questions must be submitted in writing via electronic mail, facsimile or post mail to the Issuing Officer no later than the "Closing Date for Receipt of Questions", identified in paragraph 1.1 in order to generate an official answer. All written questions will receive an official written response from HHSC and become addenda to the RFP.

- IMPORTANT -

OFFEROR may request changes and/or propose alternate language to the attached HHSC General and Special Terms and Conditions during this phase only. All requests will be presented to the HHSC Legal Department for review. No requests to change the HHSC General or Special Terms and Conditions will be entertained after the proposals have been submitted or during the contracting process. All written questions and/or approved changes will receive an official written response from HHSC and shall be recorded as addenda to the RFP.

HHSC reserves the right to reject or deny any request(s) made by OFFEROR.

Responses by HHSC shall be due to the OFFEROR no later than the dates stipulated in Section 1.1.

Impromptu, un-written questions are permitted and verbal answers will be provided during pre-proposal conferences, if held, and other occasions, but are only intended as general direction and will not represent the official HHSC position. The only official position of HHSC is that which is stated in writing and issued in the RFP as addenda thereto.

No other means of communication, whether oral or written, shall be construed as a formal or official response/statement and may not be relied upon.

SEND QUESTIONS TO:

Gary L Callahan, Senior Contracts Manager
East Hawaii Region, HHSC,
1190 Waiuanuenue Ave., Hilo, HI 96720
Fax: (808) 933-2793
Email: gcallahan@hhsc.org

1.8 SOLICITATION REVIEW

OFFEROR should carefully review this solicitation for defects and questionable or objectionable matter. Comments concerning defects and questionable or objectionable matter, **excluding requests to revise the General or Special Conditions**, must be made in writing and should be received by the Issuing Officer, Gary L. Callahan, Senior Contracts Manager, no later than the "Closing Date for Receipt of Proposals" as identified in Section 1.1. This will allow issuance of any necessary amendments to the RFP. It will also assist in preventing the opening of proposals upon which award may not be made due to a defective solicitation package.

1.9 RFP AMENDMENTS

HHSC reserves the right to amend the RFP any time prior to the ending date for the proposal evaluation period. RFP Amendments will be in the form of addenda.

1.10 CANCELLATION OF RFP

The RFP may be canceled when it is determined to be in the best interests of HHSC.

1.11 PROTESTS

Pursuant to East Hawaii Regional Policies, an actual or prospective offeror who is aggrieved in connection with the solicitation or award of the contract may submit a protest. Any protest shall be submitted in writing to the HOPA as noted below.

A protest based upon the content of the solicitation shall be submitted in writing within five (5) working days **after** the aggrieved individual/business knows or should have known of the facts giving rise thereto; provided further that the protest shall not be considered unless it is submitted in writing prior to and not later than the "Closing Date for Receipt of Proposals" identified in Section 1.1.

A protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract as detailed in East Hawaii Regional Procurement Policies. The notice of award, if any, resulting from this solicitation shall be posted in the East Hawaii Region Procurement website:

<http://www.hhsc.org/easthi/hmc/procurement.htm>

Any and all protests shall be submitted in writing to the HOPA, as follows:

Dan Brinkman, Chief Executive Officer
East Hawaii Region
Hawaii Health Systems Corporation
1190 Waianuenue Avenue
Hilo, Hawaii 96720

SECTION 2

SCOPE OF SERVICES

1. Introduction. Hilo Medical Center (HMC) Administration is seeking to hire an experienced professional firm to provide Chargemaster services to the East Hawaii Region.

The East Hawaii Region is made up of Hilo Medical Center, Hale Ho'ola Hamakua and Ka'u Hospital. Hilo Medical Center is a part of Hawaii Health Systems Corporation (HHSC), a public benefit corporation created by the State of Hawaii Legislature to manage the state's "safety net" hospitals. Hilo Medical Center is located on the island of Hawaii and provides general medical and surgical services to its surrounding rural communities. Operating 192 licensed beds; 157 acute care, and 35 SNF-ICF beds, Hilo Medical Center is HHSC's largest facility. There are also two Critical Access Hospitals in our Region, Hale Ho'ola Hamakua, a 66 bed facility located in Honoka'a, Hawaii, and Ka'u Hospital a 14 bed facility located in Pahala, Hawaii.

2. Scope of Services:

East Hawaii Region is looking for a firm who can provide Chargemaster maintenance related services including, monitoring, review, recommendation of changes and guidance / education for proper Chargemaster set up and maintenance. Service will include the necessary components to properly maintain the CDM for acute facility billing, professional billing, Critical Access Hospital and specialty billing.

2.1 CONTRACTOR REQUIREMENTS

The Scope of Services will include, but not be limited to, the following:

2.1.1 **Review.** Complete review of the CDM once per year – with an initial review of current CDM set up and recommendation of changes /corrections;

2.1.2 **Communication.** Provide quarterly updates and documentation regarding any proposed/confirmed changes by CMS that will impact CD/billing;

2.1.3 **Website.** Provide a web based site with resources to investigate, research CPT, HCPCS, ICD10, Rev and Dx codes, LCD / NCD for Noridian and CMS;

2.1.4 **Resource.** Provide a resource for communication regarding CDM questions (representative/email);

2.1.5 **Education opportunities** for facility CDM staff; these will be primarily for changes that CMS has made and/or education regarding general charge master topics. HHSC would prefer to have a minimum of 8 hours for the first year and 4 hours per year for subsequent years. These training sessions may be presented in a webinar format. HHSC prefers the additional training in the beginning of the Agreement term, since we have Acute care, Clinics, critical access hospitals and specialty services so the staff can gain a better understanding of their responsibilities; and

2.1.6 **Onsite visit.** HHSC would prefer an initial onsite visit during implementation and an onsite follow up visit within 6 months, and assume a yearly onsite visit after the 6 month visit.

2.1.7 **Invoicing.** Submit invoices to HMC for approval and payment pursuant to paragraph 18 of the GENERAL CONDITIONS. Invoices shall include at a minimum:

- a. the Contract number, (#19-0003);
- b. the date(s) of the service(s) performed;
- c. a description of the tasks performed with such detail as the Technical

- Representative may reasonably request; and
d. signed and dated by the Contractor's delegated signatory.

2.2 HMC REQUIREMENTS

2.2.1 Cooperate with selected CONTRACTOR to assist with the startup of their services that will be required under this Arrangement.

2.2.2 HHSC shall provide specific work instructions, supervision and evaluation of CONTRACTOR's work performance.

3.0 Term of Service:

The term of this Agreement shall commence on the date of the execution of the contract for services, (the "Effective Date"), and continue for one (1) year from that date, unless terminated earlier as provided herein. The Agreement may be extended for two (2) additional one (1) year periods by mutual agreement of both parties.

3.1 HIPAA Compliance Statement:

By signing this Agreement, CONTRACTOR acknowledges that CONTRACTOR is a Business Associate of HHSC within the meaning of the federal privacy and security laws as stated in 45 C.F.R. Parts 160 and 164, Subparts A, C, and E. CONTRACTOR further acknowledges that it has read the Privacy and Security Addendum, which is posted on the HHSC internet (www.hhsc.org) and is applicable to all Business Associates. Said Privacy and Security Addendum is hereby incorporated by reference and made a part of this Agreement as if fully repeated herein. By signing this Agreement, CONTRACTOR agrees to fully comply with, and be bound by, all the terms set forth in the Privacy and Security Addendum.

3.2 Personnel Removal from Project:

In the event that HOSPITAL, at any time and at its sole discretion, determines that the work performed or any portion thereof is unsatisfactory, HOSPITAL may require CONTRACTOR to correct or improve the deficiency. CONTRACTOR shall immediately thereafter take steps to correct the deficient performance to the reasonable satisfaction of the HOSPITAL.

CONTRACTOR shall remove from the assignment any CONTRACTOR personnel upon HOSPITAL's reasonable request. CONTRACTOR shall replace the removed person with a deadline mutually agreed upon with HOSPITAL.

3.4 Non-Exclusive Services:

CONTRACTOR agrees to provide Services to HOSPITAL under this Agreement on a non-exclusive basis unless otherwise negotiated by HOSPITAL and CONTRACTOR. CONTRACTOR further agrees that HOSPITAL shall retain the option to enter into agreements with other organizations for purposes of securing coding service.

4.0. TECHNICAL REPRESENTATIVES

The Technical Representative has the right to oversee the successful completion of contract requirements, including monitoring, coordinating, and assessing CONTRACTOR performance; placing requests for services;

and, approving completed work/services with verification of same for CONTRACTOR's invoices. Technical Representative will also serve as points of contact for "technical" matters throughout the term of the contract.

The Technical Representative for this agreement is:

For the Finance Department:

Deb Claflin, Patient Accounting Director
Business Office
Hilo Medical Center
1190 Waiianuenue Avenue
Phone: (808) 932-3428
dclaflin@hhsc.org

SECTION 3

PROPOSALS

3.0 INTRODUCTION

One of the objectives of the RFP is to make proposal preparation easy and efficient, while giving OFFEROR ample opportunity to highlight their proposal. When an OFFEROR submits a proposal, it shall be considered a complete plan for accomplishing the requirements described in this RFP.

3.1 PROPOSAL PREPARATION

OFFEROR shall prepare a written proposal in accordance with requirements of this Section. Proposals shall address and contain, at a minimum:

The technical category information identified in paragraph 3.7 below.

The price category information identified in paragraph 3.8 below.

The Technical and Price proposals shall be distinct documents and readily separable for review. Proposals shall include all data and information requested to qualify proposals for evaluation and consideration for award. Non-compliance may be deemed sufficient cause for disqualification of a proposal.

The development of overly elaborate proposals and presentation material, not required and/or related to RFP requirements, is **HIGHLY DISCOURAGED**. This procedure will facilitate proposal evaluations.

3.2 COSTS FOR PROPOSAL PREPARATION

Any and all costs incurred in the development of proposals, (i.e. preparing and submitting, on-site product/service demonstrations, on-site visits, oral presentations, travel and lodging, etc.) shall be the sole responsibility of OFFEROR.

3.3 DISQUALIFICATION OF PROPOSALS

HHSC reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in the RFP and which demonstrate an understanding of the Scope of Services. HHSC reserves the right to ask for clarification of any item in the proposal.

- ATTENTION -

Any proposal offering any other set of terms and conditions contradictory to those included in the RFP may be disqualified without further notice. Please refer to Section 1.7.

An OFFEROR will be disqualified and the proposal automatically rejected for any one or more of the following reasons:

- Proof of collusion among OFFERORS, in which case all proposals involved in the collusive action will be rejected.
- The OFFEROR'S lack of responsibility and cooperation as shown by past work or services.
- The proposal shows any noncompliance with applicable law.
- The proposal is conditional, incomplete, or irregular in such a way as to make the proposal

incomplete, indefinite, or ambiguous as to its meaning.

- The proposal has any provision reserving the right to accept or reject award, or to enter into a contract pursuant to an award, or provisions contrary to those required in the solicitation.
- Proof of exclusion from participation in federal health care programs, as defined in the Social Security Act (section 1128 and 1128A), and other federal laws and regulations relating to health care.

3.4 SUBMISSION OF PROPOSALS

Each OFFEROR may submit only one (1) written proposal (which includes a technical proposal and a price proposal). The Issuing Officer must receive one (1) hard copy proposal with original signatures and one (1) electronic copy (on disk, jump drive or via email) no later than the “Closing Date for Receipt of Proposals”, identified in Section 1, paragraph 1.1. **Proposals received after this time/date may be rejected.** The original shall be clearly marked “ORIGINAL”. Mail or deliver proposals to the following address:

Gary L Callahan, Senior Contracts Manager
East Hawaii Region, HHSC,
1190 Waianuenu Ave., Hilo, HI 96720
Fax: 808. 933-2793
Email: gcallahan@hhsc.org

The outside cover of the package containing the proposal **should be noticeably marked**, as follows:

“Proposal Submitted in Response to: RFP # HHSC FY19-0003”

Proposals shall not be opened publicly, but shall be opened in the presence of two or more procurement officials. The register of proposals and Offerors proposals shall be open to public inspection after the contract is executed by all parties.

An electronic copy may be e-mailed to the above e-mail address prior to the proposal due date and time and still be considered timely. However, the timeliness of the submittal will be determined by the received time noted upon the Contract Manager’s opening of the e-mail as registered on our e-mail system. The hard copy original, containing original signatures and the electronic copy must be received by HHSC as soon as possible thereafter. As noted above, late proposals may be rejected.

Offerors shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential. Such data shall accompany the proposal and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. HHSC cannot guarantee that designated data will be kept confidential. The proposals are subject to disclosure rules set forth in Chapter 92F, H.R.S. The Offeror bears the burden of establishing that the designated data is exempted from the disclosure requirements set forth in chapter 92F.

3.5 PROPOSAL TRANSMITTAL COVER LETTER

OFFEROR is required to submit proposal with a transmittal cover letter. The transmittal cover letter must be on the OFFEROR’S official business letterhead; signed by an individual authorized to legally bind the OFFEROR; affixed with the corporate seal or notarized; and minimally include information, as written/requested, on the “sample” letter in Section 6, APPENDIX A.

3.6 PUBLIC INSPECTION

Proposals shall not be opened publicly, but shall be opened in the presence of two or more procurement officials. The register of proposals and OFFERORS' proposals shall be open to public inspection after the contract is executed by all parties.

OFFEROR shall request in writing the nondisclosure of designated trade secrets or other proprietary data to be confidential. Such data shall accompany the proposal and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. The proposals are subject to disclosure rules set forth in Chapter 92F, H.R.S. The OFFEROR bears the burden of establishing that the designated data is exempted from the disclosure requirements set forth in Chapter 92F.

All proposals and other material submitted by OFFEROR become the property of HHSC and may be returned only at HHSC's option.

3.7 TECHNICAL PROPOSAL

The technical proposal shall include the following categories:

- a. SUMMARY
- b. FIRM'S BACKGROUND, QUALIFICATIONS AND EXPERIENCE
- c. FIRM'S APPROACH TO THE SCOPE OF SERVICES

3.7.1 SUMMARY

Clearly, concisely and briefly summarize and highlight the contents of the technical proposal in such a way to provide HHSC with a broad understanding and the unique, most promising aspects of the proposal.

3.7.2 BACKGROUND, QUALIFICATIONS AND EXPERIENCE

Provide explicit details on Company's background, qualifications, and experience relative to performing requirements set forth in the Scope of Services, including but not limited to:

- a. Background of the Company, i.e. services offered, organizational chart, size, resources, years in business, location, State of Hawaii presence, state of incorporation, etc.
- b. Brief description of Company's qualifications to perform Scope of Services requirements, and the Company's approach to the Scope of Services.
- c. Brief description of three (3) past and/or present contracts demonstrating Company's qualifications, experience, and performance. Include customer name, contact name and telephone number. If not available, provide contact name and telephone number of three (3) references that can discuss your Company's qualifications, experience, and performance.
- d. Company financial statements for the past two years, preferably audited, or a copy of filed tax returns. Certified Balance & Income Statements are acceptable; keep documentation simple/limited. If not available or applicable, please explain reason(s) why.
- e. Identification of litigation currently impacting the Company, if any. State "NONE", if none.

3.7.3 PERSONNEL ORGANIZATION AND STAFFING

Provide explicit details on the Company's personnel organization and staffing relative to performing requirements set forth in the Scope of Services, as follows:

- a. Company's managerial organizational chart and resumes of key positions.
- b. Key personnel identified to perform services, including: name, years of experience, years with the Company, qualifications and verifiable references (with contact telephone numbers), if any.

3.7.4 APPROACH TO THE SCOPE OF SERVICES

Provide a detailed summary of the methodology relative to performing requirements set forth in the Scope of Services, as follows:

- a. Assignment and management of personnel;
- b. The Firm's approach to the services requested;
- c. Coordination of requirements with HHSC personnel;
- d. Licensing requirements, if necessary, for Hawaii; and
- e. Problems anticipated, if any.

3.8 PRICE PROPOSAL

The price proposal shall include the following categories:

- a. SUMMARY
- b. SUMMARY OFFER

3.8.1 SUMMARY

Clearly, concisely and briefly summarize and highlight the contents of the price proposal, in such a way as to provide HHSC with a broad understanding of the unique, most promising aspects of the proposal.

3.8.2 SUMMARY OFFER

Provide a detailed, line-item list (including at a minimum: description of price elements and personnel performing services; hours required; unit price; total price; taxes including Hawaii General Excise Tax) of any and all prices, with a summary total, representing the dollar amount offered (Summary Offer) to perform Scope of Service requirements of this RFP.

All worksheets and supporting documentation in determining the Summary Offer shall be provided with the proposal to verify validity of computations and determine if prices are "fair & reasonable". A further breakdown of price elements and/or price related information may be requested during proposal review and evaluation.

The Summary Offer shall represent the total amount offered; and, if proposal is accepted, the "Not to Exceed" maximum dollar amount of the contract.

3.9 NON-APPLICABLE PROPOSAL REQUIREMENT

Excluding HHSC General and Special Terms and Conditions, and any objectionable or defective RFP matters, if any proposal requirement, as describe in this Section, is not applicable to the OFFEROR and therefore will/can not be provided, list the requirement(s) and provide detailed explanation of the reasons why the requirement(s) is not applicable. HHSC reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in this Section.

3.10 NON-ACCEPTANCE OF ANY RFP REQUIREMENT

If any RFP requirement, as describe in this RFP, is not acceptable to the Offeror, list the requirement(s) and provide detailed explanation of the reasons why the requirement(s) is not acceptable and provide a recommended revision, if applicable. HHSC reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in the RFP.

- ATTENTION -

Any proposal offering any other set of terms and conditions contradictory to those included in the RFP may be disqualified without further notice. Please refer to Section 1.7.

3.11 PROPOSAL SUBMISSION CHECKLIST

The proposal submission checklist is designed to be used as a tool to ensure that all required documents and information are being submitted with OFFEROR'S proposal; and, as a supplementary means of performing evaluation of the "Mandatory Requirements", as set forth in Section 5 paragraph 5.2.1. The checklist is required to be completed by each OFFEROR and included (as the last document) in the proposal package. The proposal submission checklist may be found in APPENDIX B.

SECTION 4

COMPENSATION AND PRICING SCHEDULE

4.1. Pricing Schedule: In accordance with the attached Scope of Services, we submit the following to HOSPITAL:

<u>Service</u>	<u>Rates</u>
Charge Master Services	\$ _____ /month
Additional Fees*	\$ _____

** (if applicable, please provide details as to what this/these fees cover & their frequency)*

4.2 Compensation: In full consideration for the services to be performed by the Contractor under this Agreement, the HOSPITAL agrees, subject to appropriation and allotments, to pay to the Contractor the following compensation, including all applicable taxes and expenses incurred, in accordance with and subject to the following:

4.2.1. The HOSPITAL shall pay CONTRACTOR the agreed upon rate for the appropriate category of services as designated by the Pricing Schedule submitted with the Offer, for services rendered pursuant to and during the term of this agreement, inclusive, all in arrears, subject to the prior receipt of the following written documentation, which must be included in the invoice for services:

- a. the Contract number, (#19-0003);
- b. the date(s) of the service(s) performed;
- c. a description of the tasks performed with such detail as the Technical Representative may reasonably request;
- d. signed and dated by the Contractor’s delegated signatory.

4.2.2. The Contractor's invoice is due to the Technical Representative named in this Agreement by the tenth (10th) day of the month immediately following the month in which the services were provided. The Hospital shall pay sums due Thirty (30) days after receipt of Contractor’s invoice or the last day of the month immediately following the month in which the services were provided, whichever is later.

4.2.3. The Contractor agrees to accept such amounts as payment in full for all services rendered in accordance with the terms of this Agreement.

4.2.4 Not to Exceed Amount: The total sum of money the Hospital is administratively authorized to expend under this Agreement during its full term, including all applicable taxes and expenses incurred, will be provided upon the issuance of the Contract Award.

SECTION 5
EVALUATIONS

5.0 INTRODUCTION

The evaluation of proposals shall be conducted comprehensively, fairly, and impartially. Structural, quantitative scoring techniques will be utilized to maximize the objectivity of the evaluation.

5.1. PROPOSAL EVALUATION COMMITTEE

An evaluation committee will be selected from HHSC to perform all evaluation requirements. The committee will be composed of individuals with experience in, knowledge of, and program responsibility for the requirements identified in the RFP. HHSC reserves the right to request information from OFFEROR to clarify the OFFEROR'S proposal.

5.2 EVALUATION PHASES

Evaluation phases will be conducted as follows:

- Phase 1.....Evaluation of Mandatory Requirements
- Phase 2.....Technical Proposal Evaluation
- Phase 3.....Price Proposal Evaluation
- Phase 4 a. Determination of Priority List of OFFERORS
- Phase 4.b. Proposal Discussions by Priority-List **(optional)**
- Phase 5.....Best and Final Offers by Priority List **(optional)**
- Phase 6.....Recommendation for Contract Award

5.2.1 PHASE - 1 EVALUATION OF MANDATORY REQUIREMENTS

The evaluation of the mandatory requirements, as listed below, shall be based upon a "Pass/ No Pass" basis. The purpose of this phase is to determine whether an OFFEROR'S proposal is sufficiently responsible and responsive to RFP requirements to permit a complete evaluation, i.e. responsible in terms of "Does the OFFEROR have the capability to perform fully the Scope of Services requirements"; and, "Were proposal documents, as identified below, received by HHSC and do they contain the required information?" Failure to meet any mandatory requirement may be grounds for deeming the proposal non-responsible, non-responsive or both and disqualification ("No Pass") thereof.

Proposal Mandatory Requirements.

- Proposal Cover Letter **with corporate seal or notarization**
- Technical Proposal
 - Background, Qualifications and Experience
 - Personnel Organization and Staffing
 - Approach to the Scope of Services
 - Miscellaneous
- Price Proposal
- State of Hawaii Compliance Documents
- Proposal Submission Checklist

5.2.2 PHASE - 2 TECHNICAL PROPOSAL EVALUATION

Evaluation of OFFEROR’S technical proposal shall be conducted using the technical proposal categories and the value weight percentages identified in paragraph 5.3 and the evaluation scoring system identified in paragraph 5.4.

5.2.3 PHASE - 3 PRICE PROPOSAL EVALUATION

Evaluation of the price proposal shall be conducted using the price proposal category and the value weight percentages identified in paragraph 5.3 and the evaluation scoring system identified in paragraph 5.4.

5.2.4 PHASE - 4 PROPOSAL DISCUSSIONS WITH PRIORITY-LISTED OFFERORS (OPTIONAL)

At its discretion, following the Mandatory Requirements Phase, HHSC may develop a Priority List of Offerors based on the evaluation of OFFERORS’ Technical and Price proposals. This Priority List may be asked to conduct discussions with HHSC. OFFEROR’S proposal may be accepted without Discussions. In the event that HHSC elects to hold Discussions, HHSC shall inform Priority-Listed OFFERORS of specific Discussion topics and issues; and schedule Discussion proceedings.

5.2.5 PHASE - 5 BEST AND FINAL OFFERS (OPTIONAL)

OFFEROR may be requested to submit a Best and Final offer. Best and Final offers shall be evaluated and scoring of the OFFEROR’S proposal adjusted, accordingly. If a Best and Final offer is requested but not submitted, the previous submittal shall be construed as the Best and Final offer.

5.2.6 PHASE - 6 RECOMMENDATION FOR CONTRACT AWARD

The Evaluation Committee shall prepare a report summarizing proposal evaluation findings/rankings and provide recommendation for award of contract to the HOPA.

5.3 EVALUATION CATEGORIES AND VALUE WEIGHT PERCENTAGES

Mandatory Requirements	Pass/No Pass
Technical Proposal	Value Weight
Firm’s Background, Qualifications & Past Performance	30%
Method of Approach to the Scope of Services.....	25%
Experience & Expertise of Staff	20%
Price Proposal.....	25%
TOTAL.....	100%

5.4 EVALUATION SCORING SYSTEM

The maximum number of points available for scoring is one thousand (1000) per evaluator. The proposal receiving the highest number of points is considered statistically the best proposal and the **best value** to HHSC; and, will be recommended for award of contract, unless otherwise determined and justified by the evaluation committee.

The evaluation categories are assigned a value weight percentage, as determined by HHSC, totaling 100%. Each category will be rated between one (1) and ten (10), with ten being the highest (the best rating) by each member of the evaluation committee. The OFFEROR'S total score (see note below) will be determined by: a) multiplying the assigned weight value of each category by the numerical rating provided by the evaluation committee member to determine the score for each category; b) totaling the score for all categories of each evaluation committee member; and, c) totaling the score of all evaluators.

Note: In determining the total score, the OFFEROR'S price proposal with the lowest price will receive the highest available rating allocated to price. Each proposal that has a higher price than the lowest will have a lower rating for price. The points allocated to higher-priced proposals will be equal to the lowest proposal price multiplied by the maximum points available for price, divided by the higher proposal price.

SECTION 6
AWARD OF CONTRACT

6.0 AWARD OF CONTRACT

Award of contract shall be made to the most responsible and responsive OFFEROR whose proposal is determined by the Evaluation Committee to provide the best value to HHSC, considering all evaluation reviews and results.

6.1 CONTRACT AWARD NOTIFICATION

The notice of award, if any, resulting from this solicitation shall be posted on the Hawaii State Procurement Office website. This will serve as the official notification to all OFFERORS. In addition, the Issuing Officer will inform the successful OFFEROR of contract award selection by an official “notice of award” letter.

At its discretion and as a courtesy to the OFFEROR the Issuing Officer may issue a “Notice of Posting of Award” to the unsuccessful OFFERORS. However a delay in issuing the notice or the inadvertent omission of such courtesy notice will not extend the protest filing time.

6.2 CONTRACT AWARD DEBRIEFING

If requested, HHSC shall provide a contract award debriefing. The purpose of a debriefing is to inform the non-selected OFFEROR of the basis for the source selection decision and contract award. A written request to the Issuing Officer for a debriefing shall be made within three (3) working days after receipt of non-award of contract letter from HHSC and/or posting of the award of the contract.

6.3 METHOD OF AWARD

6.3.1. CONTRACT DOCUMENT

The contract will be awarded by executing the **Offer and Acceptance Document** (Page 3) in this RFP (hereinafter “CONTRACT”) by HHSC. This document, any Solicitation Addenda, and the selected Offeror’s proposal and any attachments, will serve as the official, legal contractual instrument between both parties. This document will incorporate (by attachments or reference) the RFP, with any and all addendums; GENERAL CONDITIONS and any SPECIAL CONDITIONS; and the CONTRACTOR’s accepted proposal, with any and all addendums, changes, negotiated agreements, all of which becomes part and whole of the CONTRACT.

6.4. GENERAL AND SPECIAL CONDITIONS:

The GENERAL CONDITIONS - NON-PHYSICIAN HEALTHCARE SERVICES, APPENDIX E, the SPECIAL CONDITIONS, APPENDIX F, and the Business Associate Agreement (“BAA”). Appendix G, are applicable and shall be part and whole and attached to the Agreement.

The GENERAL CONDITIONS - NON-PHYSICIAN HEALTHCARE SERVICES, APPENDIX E **provisions are non-negotiable**. Please refer to Section 1.7.

Of particular significance, please note/review the following requirements:

6.4.1 GENERAL EXCISE/USE TAX

Refer to the GENERAL CONDITIONS - NON-PHYSICIAN HEALTHCARE SERVICES, APPENDIX D. Work to be performed under this solicitation is a business activity taxable under Chapter 237, Hawaii Revised Statutes (HRS), and Chapter 238, HRS, where applicable. Both out-of-state and Hawaii CONTRACTOR are advised that the gross receipts derived from this solicitation are subject to the general excise tax imposed by Chapter 237, HRS, and where applicable to tangible property imported into the State of Hawaii for resale, subject to the use tax imposed by Chapter 28, HRS.

Pursuant to Section 237-9, HRS, the CONTRACTOR is required to obtain and/or possess a valid General Excise Tax License from the Hawaii State Department of Taxation (DOTAX) prior to executing a contractual agreement with a State Agency (Reference the GENERAL CONDITIONS - NON-PHYSICIAN HEALTHCARE SERVICES, APPENDIX E).

The **General Excise Tax License** shall be obtained from the DOTAX offices in the State of Hawaii or the DOTAX Web Site and by mail or FAX. Refer to the next paragraph for procedures in obtaining DOTAX forms and information.

Hawaii Compliance Express

Alternatively, OFFEROR may apply and obtain proof of compliance with the above agencies electronically through the Hawaii State Procurement Office's "Hawaii Compliance Express website at <http://vendors.ehawaii.gov>

One interface covers all the forms for all state agencies and partners. Easy to read instructions and context sensitive help make compliance safe, fast and efficient. Using the Wizard will file with Department of Taxation and optionally with the Business Registration Division of the DCAA. If you have or will have employees, the Wizard will also file with Department of Labor and Industrial Relations.

OFFERORS who elect to use the services will be required to pay an annual fee of \$12.00.

6.4.2 CERTIFICATE OF COMPLIANCE

Pursuant to East Hawaii Regional Procurement Policies, the CONTRACTOR is required to obtain/posses a valid **Certificate of Compliance** from the Hawaii State Department of Labor and Industrial Relations (DLIR) prior to executing a contractual agreement with a State Agency. The certificate is valid for six months from the date of issue and must be valid on the date it is received by HHSC.

The **Certificate of Compliance** shall be obtained on the State of Hawaii, DLIR APPLICATION FOR CERTIFICATE OF COMPLIANCE; Form LIR #27, is available at www.hawaii.gov/labor (open "Get a Form"; then open "LIR#27) or at the neighbor island DLIR District Offices. The application for the certificate is the responsibility of the OFFEROR and must be submitted directly to the DLIR and not to HHSC. The DLIR will return the form to the CONTRACTOR who in turn shall submit the form to HHSC.

6.4.3 CERTIFICATE OF GOOD STANDING

a. HAWAII BUSINESS. A business entity referred to as a “Hawaii Business”, is registered and incorporated or organized under the laws of the State of Hawaii. As evidence of compliance, the CONTRACTOR shall obtain/possess **Certificate of Good Standing** issued by the Department of Commerce and Consumer Affairs Business Registration Division (BREG). A “Hawaii Business” that is a sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the certificate. A CONTRACTOR’s status as sole proprietor and its business street address as indicated on the proposal transmittal cover letter (APPENDIX A) will be used to confirm that the CONTRACTOR is a Hawaii Business.

b. COMPLIANT NON-HAWAII BUSINESS. A business entity referred to as a “Compliant Non-Hawaii Business” is not incorporated or organized under the laws of the State of Hawaii but is registered to do business in the State. As evidence of compliance, the CONTRACTOR shall obtain/posses **Certificate of Good Standing** issued by the Department of Commerce and Consumer Affairs Business Registration Division (BREG).

c. The **Certificate of Good Standing** can be obtained by phone (call (808) 586-2727, Monday thru Thursday 7:45-4:30 HST) or by mail (Department of Commerce and Consumer Affairs, Business Registration Division, P.O. Box 40, Honolulu, Hawaii 96810). The certificate is valid for six (6) months from date of issue and must be valid on the date it is received by HHSC.

6.4.4 CONTRACT EXECUTION

Upon receipt of the signed OFFER & ACCEPTANCE page, the CONTRACTOR shall be notified of the Contract Award. CONTRACTOR shall have ten (10) business days to execute and return the CONTRACT to the Issuing Officer. Explicit execution instructions will accompany the CONTRACT. A copy of the fully executed CONTRACT will be provided the CONTRACTOR within seven (7) business days of CONTRACT execution.

Award of CONTRACT may be withdrawn if the CONTRACTOR is unable to meet CONTRACT execution requirements.

6.4.5 CONTRACT COMMENCEMENT DATE

Upon completion of CONTRACT execution requirements, a **“Notice to Proceed”** letter will be provided the CONTRACTOR specifying the “Commencement” (start work) date of the CONTRACT. No work is to be undertaken by the CONTRACTOR prior to the commencement date specified in the Notice to Proceed letter. HHSC is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the CONTRACTOR prior to the official, notice to proceed “Commencement” date.

SAMPLE PROPOSAL TRANSMITTAL COVER LETTER

Mr. Callahan:

(Name of Business) _____ proposes to provide any and all goods and services as set forth in the “Request for Proposals for Competitive Sealed Proposals” to provide “**Chargemaster Services**”, RFP # **HHSC FY19-0003**, for which fees/costs have been set. The fees/costs offered herein shall apply for (Please insert applicable period of time)_____.

It is understood and agreed that (Name of Business)_____ have read HHSC’s Scope of Services described in the RFP and that this proposal is made in accordance with the provisions of such Scope of Services. By signing this proposal, (Name of Business)_____ guarantee and certify that all items included in this proposal meet or exceed any and all such Scope of Services.

_____ (Name of Business) _____ agree, if awarded the contract, to provide the goods and services set forth in the RFP; and comply with all terms and conditions indicated in the RFP; and at the fees/costs set forth in this proposal. The following individual(s) may be contacted regarding this proposal:

Other information:

Business Phone #:		Federal Tax ID #:	
Facsimile #:		Hawaii GET Lic. ID #:	
E-mail address:			

(Name of Business) _____ is a: Sole Proprietor Partnership Corporation Joint Venture

Other (Specify) _____

State of Incorporation is: (Specify) _____

The exact legal name of the business under which the contract, if awarded, shall be executed is: _____

(Authorized Bidder’s Signature, Printed Name/Title; Corporate Seal or Notarized)

Encl: Proposal

PROPOSAL SUBMISSION CHECKLIST

***IF SPECIFIC ITEM(S) IS NOT APPLICABLE, MARK WITH "N/A"---DO NOT LEAVE BLANK.**

**Please
Check Off
Offeror
Submitted**

HHSC Use

Proposal Items

<input type="checkbox"/>	<input type="checkbox"/>	Proposal Received "On-Time"
<input type="checkbox"/>	<input type="checkbox"/>	One (1) Hard copy of the proposal with Original signatures & one (1) electronic copy of Proposal (on disk, jump drive or emailed copy).
<input type="checkbox"/>	<input type="checkbox"/>	<u>Signed Offer & Acceptance Page</u>
<input type="checkbox"/>	<input type="checkbox"/>	Proposal Transmittal Cover Letter:
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Official Business Letterhead
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Authorized Signature
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Required Information
<input type="checkbox"/>	<input type="checkbox"/>	Technical Proposal
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Background, Qualifications and Experience
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Personnel Organization and Staffing
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Method of Approach to the Scope of Services
<input type="checkbox"/>	<input type="checkbox"/>	Cost Proposal
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Summary
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Summary Offer
<input type="checkbox"/>	<input type="checkbox"/>	Optional Services Costs
<input type="checkbox"/>	<input type="checkbox"/>	Non Applicable Proposal Requirement(s)
<input type="checkbox"/>	<input type="checkbox"/>	All Data and Information Required of the RFP
<input type="checkbox"/>	<input type="checkbox"/>	Proprietary Documents
<input type="checkbox"/>	<input type="checkbox"/>	Others (List)
<input type="checkbox"/>	<input type="checkbox"/>	Proposal Submission Checklist
<input type="checkbox"/>	<input type="checkbox"/>	Hawaii State Compliance Documents

CONTRACTOR'S ACKNOWLEDGMENT

State of _____

County of _____

County of _____

On this day of _____, 20____, before me personally appeared _____ to me personally known, who being by me duly sworn, did say that he/she is the _____ of _____, the CONTRACTOR named in the foregoing instrument, and that he/she is authorized to sign said instrument in behalf of the CONTRACTOR, and acknowledges that he/she executed said instrument as the free act and deed of the CONTRACTOR.

NOTARY PUBLIC:

SIGNATURE: _____

PRINTED NAME: _____

COMMISSION EXPIRES: _____

CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

I certify that the services to be provided under this Agreement by the CONTRACTOR may be performed concurrently with the CONTRACTOR's private business or profession or other private employment, and that it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State or HHSC. Pursuant to section 76-16(15), Hawaii Revised Statutes, the services are exempt from the state civil service.

_____ Date: _____

Dan Brinkman
Chief Executive Officer
East Hawaii Region
Hawaii Health Systems Corporation

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty percent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State or HHSC, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges.

On behalf of _____, CONTRACTOR, the undersigned does declare, under penalty of perjury, as follows:

1. CONTRACTOR (is) (is not) a legislator or an employee or a business in which a legislator or an employee has a controlling interest.*

2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.

3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a State or HHSC employee or, in the case of the Legislature, by a legislator.

4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the State or HHSC within the preceding two (2) years and who participated while in state office or employment on the matter with which the Agreement is directly concerned.

5. CONTRACTOR has not been represented or assisted on matters related to this Agreement, for a fee or other consideration by an individual who, within the past twelve (12) months, has been a State or HHSC employee, or in the case of the Legislature, a legislator.

6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, 1) within the past twelve (12) months, served as a State or HHSC employee or in the case of the Legislature, a legislator, and b) participated while an employee or legislator on matters related to this Agreement.

CONTRACTOR understands that the Agreement to which this document is attached is voidable on behalf of the State or HHSC if this Agreement was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the State or HHSC.

CONTRACTOR

By: _____

Title: _____

Date: _____

*Reminder to FACILITY: if "is" is circled, YOUR FACILITY is required, under section 84-15, Hawaii Revised Statutes, to file with the State Ethics Commission, ten (10) days before the Agreement is entered into, a written justification as to why the Agreement was not required to be competitively bid.

HAWAII HEALTH SERVICES CORPORATION GENERAL CONDITIONS
(PURCHASE OF GOODS AND SERVICES - NON-HEALTHCARE SERVICE PROVIDERS)
(FOR NON-HRS 103D AGREEMENTS) (ver. 7/16)

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1. COORDINATION OF SERVICES BY HHSC. The "head of the purchasing agency" (through the Technical Representative(s) or other designee as specified in the Agreement) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in this Agreement. The CONTRACTOR shall maintain communication with the head of the purchasing agency through the Technical Representative(s) or other designee at all stages of the CONTRACTOR's work, and submit to the head of the purchasing agency for resolution any questions which may arise as to the performance of this Agreement. "Purchasing agency" as used in these General Conditions means and includes any HHSC region or facility which is authorized to enter into contracts for the procurement of goods and services. The term "HHSC" refers to HHSC and the region or facility entering into this Agreement. The term, "CONTRACTOR" includes all employees, agents, subcontractors, and other entities and persons utilized by the CONTRACTOR to fulfill the obligations of this Agreement. It will be the responsibility of CONTRACTOR to ensure that those other persons and entities follow the terms of this Agreement.

2. RELATIONSHIP OF PARTIES: INDEPENDENT CONTRACTOR STATUS AND RESPONSIBILITIES, INCLUDING TAX RESPONSIBILITIES.

- a. In the performance of services required under this Agreement, the CONTRACTOR is an independent contractor, with the authority and responsibility to control and direct the performance and details of the work and services required under this agreement; however, HHSC shall have a general right to inspect work in progress to determine whether, in HHSC's opinion, the services are being performed by the CONTRACTOR in compliance with this Agreement. Unless otherwise provided by special condition, it is understood that HHSC does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to provide services to other individuals or entities.
- b. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Agreement, agents or employees of HHSC for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from HHSC any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to HHSC employees.
- c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR's performance under this Agreement. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR's employees or agents in the course of their employment.

- d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes and (iii) general excise taxes. Unless provided otherwise by agreement between the parties, the CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.
- e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, HRS, and shall comply with all requirements thereof.
- f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs and other liabilities associated with securing the insurance coverage.

3. PERSONNEL REQUIREMENTS.

- a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Agreement.
- b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Agreement, and that all applicable licensing and operating requirements imposed or required under federal, state or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied. Where the facility is Joint Commission accredited, CONTRACTOR agrees to meet all applicable Joint Commission standards.

4. CONTRACTOR EXCLUSION FROM FEDERAL PROGRAMS.

CONTRACTOR affirmatively states that it and none of its employees, agents or subcontractors performing services or providing goods pursuant to this Agreement are excluded from participation in federal health care programs, as defined in the Social Security Act (Section 1128 and 1128A), and other federal laws and regulations relating to health care. CONTRACTOR has an affirmative duty to verify the accuracy of this statement at least monthly and to inform HHSC in the event it is discovered that it is no longer true. HHSC reserves the right to verify that the above statements are true and to immediately cancel this Agreement in the event they are not true.

5. NONDISCRIMINATION. No person performing work under this Agreement, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law or regulation.

6. CONFLICTS OF INTEREST. The CONTRACTOR represents that neither the CONTRACTOR, nor any employees or

agents of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Agreement.

7. SUBCONTRACTS AND ASSIGNMENTS: CHANGE OF NAME.

- a. No assignment without consent. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Agreement and no such assignment or subcontract shall be effective unless the CONTRACTOR obtains the prior written consent of HHSC. Additionally, no such assignment or subcontract shall be effective unless the contractor's assignee or subcontractor obtains a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9 HRS.
- b. Recognition of a successor in interest. When in the best interests of HHSC, a successor in interest may be recognized in an assignment agreement in which HHSC, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:
- (1.) The Assignee assumes all of the CONTRACTOR'S obligations;
 - (2) The CONTRACTOR remains liable for all obligations under this Agreement but waives all rights under this Agreement as against HHSC; and
 - (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
- c. Change of name. When the CONTRACTOR asks to change the name under which it holds this Agreement with HHSC, the contract officer of the purchasing agency shall, upon receipt of a document acceptable or satisfactory to said officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Agreement with the CONTRACTOR to effect such a change of name. The amendment to this Agreement changing the CONTRACTOR'S name shall specifically indicate that no other terms or conditions of this Agreement are thereby changed.

8. INDEMNIFICATION AND DEFENSE. The CONTRACTOR shall defend, indemnify and hold harmless HHSC, the contracting facility, and their directors, employees and agents from and against all liability, loss, damage, cost and expense, including all attorneys' fees and costs, and all claims, suits and demands therefor, arising out of or resulting from any acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents or subcontractors under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement for any reason.

9. LIQUIDATED DAMAGES. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 11 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to HHSC the amount, if any, set forth in this Agreement per calendar day from the date set for cure until either (i) HHSC reasonably obtains similar goods or services, or both, if the contract is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the contract is not terminated for default. To the extent that the CONTRACTOR's delay or nonperformance is excused under paragraph 11.d (Excuse for Nonperformance or Delayed Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR shall remain liable for damages caused other than by delay. This paragraph is of no force and effect unless the amount of liquidated damages is specified in the Agreement.

10. SUSPENSION OF AGREEMENT. HHSC reserves the right at any time and for any reason to suspend this Agreement for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

- a. Order to stop performance. The head of the purchasing agency may, by written order to the CONTRACTOR at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Agreement. This order shall be for a specified period of time not exceeding sixty (60) days unless the parties agree to a different period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Agreement at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any other period to which the parties shall have agreed, the head of the purchasing agency shall either:
- (1.) Cancel the stop performance order; or
 - (2.) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Agreement.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall

have the right to resume performance. An appropriate adjustment shall be made in the delivery or performance schedule or contract price, or both, and the Agreement shall be modified in writing accordingly, if:

- (1.) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Agreement and
- (2.) The CONTRACTOR asserts a claim for such adjustment within thirty (30) days after the end of the period of performance stoppage provided that if the head of the purchasing agency decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.

- C. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provisions of this Agreement.

11. TERMINATION FOR DEFAULT.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement, or any extension thereof, or otherwise fails to timely satisfy the Agreement provisions, or commits any other substantial breach of this Agreement, the head of the purchasing agency may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the head of the purchasing agency, such officer may terminate the CONTRACTOR's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the head of the purchasing agency may procure similar goods or services in a manner and upon the terms deemed appropriate. The CONTRACTOR shall continue performance of the Agreement to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods and services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Agreement and subject to any directions from the head of the purchasing agency, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the State of Hawaii or HHSC has an interest.

- C. Compensation. Payment for completed goods and services delivered and accepted by HHSC shall be at the price set forth in the Agreement. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the head of the purchasing agency. If the parties fail to agree, the head of the purchasing agency shall set an amount. HHSC may withhold from amounts due the CONTRACTOR such sums as the head of the purchasing agency deems to be necessary to protect HHSC against loss because of outstanding liens or claims and to reimburse HHSC for the excess costs expected to be incurred by HHSC in procuring similar goods and services.

- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and failure arises out of causes such as: acts of God; acts of a Public enemy; acts of the State of Hawaii and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Agreement. Upon request of the CONTRACTOR, the head of the purchasing agency shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Agreement, the delivery schedule shall be revised accordingly, subject to the rights of HHSC under this Agreement. As used in this paragraph the term "subcontractor" means subcontractor at any tier.

- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 11.d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 12.

- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Agreement.

12. TERMINATION FOR CONVENIENCE BY HHSC.

- a. Termination for convenience of goods and services agreements. The head of the purchasing agency may, when the interests of HHSC so require, terminate this Agreement in whole or in part, for the convenience of HHSC. HHSC shall give written notice of the termination to the CONTRACTOR specifying the part of the Agreement terminated and when such termination becomes effective. HHSC shall exercise its rights under this paragraph in good faith and only when circumstances subsequent to the signing of this Agreement are changed to the extent that continuation of the Agreement is not in the best interest of HHSC. Such termination shall not be arbitrary or capricious.
- b. CONTRACTOR's obligations. The CONTRACTOR shall mitigate the cost of termination and incur no further obligations in connection with the terminated performance. The CONTRACTOR will stop performance to the extent specified on the date(s) set in the notice of termination. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance. The head of the purchasing agency may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to HHSC. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.
- c. Right to goods and work product. The head of the purchasing agency may require the CONTRACTOR to transfer title and deliver to HHSC in the manner and to the extent directed by the head of the purchasing agency:
 - (1.) Any completed goods or work product; and
 - (2.) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Agreement; and
 - (3.) The CONTRACTOR shall, upon direction of the head of the purchasing agency, protect and preserve property in the possession of the CONTRACTOR in which HHSC has an interest. If the head of the purchasing agency does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that HHSC has

breached the Agreement by exercise of the termination for convenience provision.

- d. Compensation. The CONTRACTOR may submit a termination claim specifying the unavoidable costs incurred because of the termination for convenience. This claim is in addition to any claim for payment for goods or services already performed prior to the termination. The head of the purchasing agency shall review the termination claim and respond to the CONTRACTOR with written objections or full payment within 60 days, provided that the claim is substantiated with invoice documentation. The amount paid for a termination claim shall be determined by the head of the purchasing agency but in no event shall exceed the amount remaining on the contract.

13. CHANGE ORDERS TO GOODS AND SERVICES

AGREEMENTS. A change order is a written order signed by the head of the purchasing agency, directing the CONTRACTOR to make changes which the below "change clause" authorizes the head of the purchasing agency to order without the consent of the CONTRACTOR.

- a. Change clause. By written order, at any time, and without notice to any surety, the head of the purchasing agency may, unilaterally, order:
 - (1.) Changes in the work within the scope of the Agreement; and
 - (2.) Changes in the time of performance of the Agreement that do not alter the scope of the work of the Agreement.
- b. Adjustment of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Agreement, an adjustment shall be made and the Agreement modified in writing accordingly. Any adjustment in Agreement price made pursuant to this clause shall be determined, where applicable, as negotiated. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Agreement as changed, provided that the head of the purchasing agency promptly and duly makes the provisional adjustments in payment or time for the direct costs of the work as HHSC deems reasonable. The right of the CONTRACTOR to dispute the Agreement price or time required for performance or both shall not be waived by its performing the work, provided however, that it follows the written notice requirements for disputes and claims established in the Agreement or in these rules.
- c. Time period of claim. Within ten (10) days after receipt of a written change order, unless the period is extended by the head of the purchasing agency in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.

- d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written response is not given prior to final payment under this Agreement.
- e. Claims not barred. In the absence of a change order, nothing in the clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Agreement or for breach of contract.

14. MODIFICATIONS OF AGREEMENT.

- a. In writing. Any modification, alteration, amendment, change or extension of any term, provision or condition of this Agreement shall be made by written amendment to this Agreement signed by the CONTRACTOR and HHSC. Change orders shall be made in accordance with paragraph 13 herein. Notice to any surety is not required.
- b. No oral modification. No oral modification, alteration, amendment, change or extension of any term, provision or condition of this Agreement shall be permitted or acknowledged.
- c. Adjustment of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Agreement, an adjustment shall be made and this Agreement modified in writing accordingly. Any adjustment in price made pursuant to this clause shall be determined, where applicable, in accordance with the terms of this Agreement or as negotiated.
- d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Agreement and the claims are not made prior to final payment under this Agreement.
- e. Claims not barred. In the absence of a written modification to the Agreement, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Agreement or for breach of contract.

15. VARIATION IN QUANTITY FOR DEFINITE QUANTITY AGREEMENTS.

Upon the agreement of HHSC and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in the Agreement, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the head of the purchasing agency makes a written determination that such an increase will either be more economical than awarding another Agreement or that it would not be practical to award another agreement.

16. CLAIMS BASED ON THE HEAD OF THE PURCHASING AGENCY'S ACTIONS OR OMISSIONS.

- a. Change in scope. If any action or omission on the part of the head of the purchasing agency (which term includes the designee of such officer) requiring performance changes within the scope of the Agreement constitutes the basis for a claim by

the CONTRACTOR for additional compensation, damages or an extension of time for completion, the CONTRACTOR shall continue with performance of the Agreement in compliance with the directions or orders of proper officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages or extension of time for completion, provided:

- (1.) Written notice required. The CONTRACTOR shall give written notice to the head of the purchasing agency:
 - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission; or
 - (B) Written thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
 - (C) Within such further time as may be allowed by the head of the purchasing agency in writing.
- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages or an extension of time. The head of the purchasing agency, upon receipt of such a notice, may rescind such action, remedy such omission or take such other steps as may be deemed advisable.
- (3) Basis must be explained. The notice required by this paragraph must describe as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the head of the purchasing agency within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to HHSC, justifying the claimed additional costs or an extension of time in connection with such changes.

- b. CONTRACTOR not excused. Nothing herein contained, however shall excuse the CONTRACTOR from compliance with any rules or laws precluding collusion or bad faith in causing the issuance of or performing change orders which are clearly not within the scope of the Agreement.

17. COSTS AND EXPENSES. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Agreement shall be subject to the following guidelines, unless otherwise stated in the Agreement:

- a. Reimbursement for air transportation shall be for actual cost or coach class airfare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the head of the purchasing agency is obtained, reimbursement for subsistence allowance (i.e., hotel and meals) shall be \$145 per day, which consists of \$85 for hotel and \$60 for food, computed on quarter days. No other travel or living expense (e.g., tips, entertainment, alcohol, etc.) shall be reimbursed by HHSC, other than those items listed in subparagraphs a and b, above. Invoices shall document the days of travel by including the name of the traveler, itinerary, airfare receipt, hotel receipt, and ground transportation receipts. All travel must be pre-approved by the HHSC technical representative.
- d. CONTRACTORS with an office located on the same island as the site of the services to be provided pursuant to this Agreement are not entitled to per diem or transportation expense reimbursement unless explicitly specified in the Agreement.

18. PAYMENT PROCEDURES.

- a. Original invoices required. All payments under this Agreement shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Agreement have been performed by the CONTRACTOR according to the Agreement.
- b. Payment only for work under contract. HHSC is not responsible to pay for work performed by CONTRACTOR or its subcontractors that is not in this Agreement and any amendments or change orders thereto. All CONTRACTORS must follow paragraph 14, Modifications of Agreement or paragraph 13, Change Orders to Goods and Services Agreements and must have proper authorization before performing work outside the original Agreement.

19. PROMPT PAYMENT OF SUBCONTRACTORS.

- a. Generally. Any money paid to a CONTRACTOR shall be disbursed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes regarding payment.
- b. Final payment. Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- c. Penalty. The procurement officer or the CONTRACTOR, as applicable, will be subject to a penalty of one and one-half per cent per month

upon outstanding amounts due that were not timely paid by the responsible party under the following conditions. Where a subcontractor has provided evidence to the CONTRACTOR of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request as described in paragraph (d), and:

- (1) Has provided to the CONTRACTOR an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State, as provided in Section 103-32.1, HRS; or
- (2) The following has occurred:
 - (A) A period of ninety days after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has elapsed without written notice of a claim given to CONTRACTOR and the surety, as provided for in Section 103D-324, HRS (reference of HRS 103D-324 provision does not intend to imply that this contract is governed by that chapter or the implementing rules and regulations); and
 - (B) The subcontractor has provided to the CONTRACTOR, an acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two times the amount being retained or withheld by the CONTRACTOR; any other bond acceptable to the CONTRACTOR; or any other form of mutually acceptable collateral, then, all sums retained or withheld from a subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the procurement officer to the CONTRACTOR and subsequently, upon receipt from the procurement officer, by the CONTRACTOR to the subcontractor within the applicable time periods specified in paragraph (b) and Section 103-10, HRS. The penalty may be withheld from future payment due to the CONTRACTOR, if the CONTRACTOR was the responsible party. If a CONTRACTOR has violated paragraph (2) three or more times within two years of the first violation, the contractor shall be referred by the procurement officer to the contractors license board for action under Section 444-17(14), HRS.
- d. A properly documented final payment request from a subcontractor, as required by paragraph (c), shall include:
 - (1) Substantiation of the amounts requested;

- (2) A certification by the subcontractor, to the best of the subcontractor's knowledge and belief, that:
- (A) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;
 - (B) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the subcontract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and
 - (C) The payment request does not include any amount that the subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract; and
- (3) The submission of documentation confirming that all other terms and conditions required under the subcontract agreement have been fully satisfied.

The procurement officer shall return any final payment request that is defective to the CONTRACTOR within seven days after receipt, with a statement identifying the defect.

- e. This section shall not be construed to impair the right of a CONTRACTOR or a subcontractor at any tier to negotiate and to include in their respective subcontracts provisions that provide for additional terms and conditions that are requested to be met before the subcontractor shall be entitled to receive final payment under paragraph (c); provided that any such payments withheld shall be withheld by the procurement officer.

20. CONFIDENTIALITY OF MATERIAL.

- a. All material given to or made available to the CONTRACTOR by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of HHSC. It is acknowledged and agreed that all of the trade secrets, business plans, marketing plans, know how, data, contracts, including this Agreement, documents, scientific and medical concepts, billing records, personnel records, medical records of any kind, and referral sources for existing or future services, products, operations, management, business, pricing, financial status, valuations, goals, strategies, objectives and agreements of HHSC and any of its facilities, affiliates or subsidiaries, and all patient information in any form, whether written, verbal or electronic are confidential ("Confidential Information"); provided, however, that Confidential

Information, with the exception of patient information, shall not include information that is in the public domain.

- b. All information, data, or other material provided by the CONTRACTOR to the HHSC is subject to the Uniform Information Practices Act, chapter 92F, HRS, as modified by chapter 323F HRS.

21. CORPORATE COMPLIANCE PROGRAM. A description of the Corporate Compliance Program of HHSC, including orientation materials, is posted on the HHSC internet site (www.hhsc.org). The CONTRACTOR, by signing this contract, acknowledges that it has read said description, and that the CONTRACTOR knows of the fact and substance of the Corporate Compliance Program, which governs operations at all facilities of the HHSC. The CONTRACTOR understands and agrees that employees, agents, contractors and subcontractors performing any services at any of the HHSC facilities shall be fully subject to such Corporate Compliance Program, as may be amended from time to time, as well as all federal program requirements and applicable policies and procedures of HHSC and its facilities. The Corporate Compliance Program requires periodic training, including an orientation program, of all people who provide financial, business office, personnel, coding, medical records information systems and clinical services in the facility. The CONTRACTOR agrees to cause its employees, agents and contractors who provide financial, business office, personnel, coding, medical records information systems and/or clinical services at any of the HHSC facilities to review the posted orientation materials and participate in any compliance training programs HHSC may require.

22. BUSINESS ASSOCIATE ADDENDUM. By signing this Agreement, CONTRACTOR acknowledges that CONTRACTOR may be a Business Associate of HHSC within the meaning of the federal privacy and security laws as stated in 45 C.F.R. Parts 160 and 164, Subparts A, C, and E. CONTRACTOR further acknowledges that CONTRACTOR has read the Business Associate Addendum, which is posted on the HHSC internet site (www.hhsc.org/BAA). If CONTRACTOR is a Business Associate as defined in the above laws, said Business Associate Addendum is hereby incorporated by reference and made a part of this Agreement as if fully repeated herein. By signing this Agreement, CONTRACTOR agrees to fully comply with, and be bound by, all terms set forth in the Business Associate Addendum, as it may be amended from time to time.

23. PUBLICITY. The CONTRACTOR shall not refer to the HHSC or any office, agency, or officer thereof, or any HHSC employee, including the head of the purchasing agency, the Agency procurement officer, the HHSC Board of Directors, or to the services or goods, or both, provided under this Agreement, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR without the explicit written consent of HHSC. All media contacts with the CONTRACTOR about the subject matter of this Agreement shall be referred to the head of the purchasing agency.

24. OWNERSHIP RIGHTS AND COPYRIGHT. HHSC shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled or conceived by the CONTRACTOR pursuant to this Agreement and all such material shall be considered "works for hire." All such materials shall be delivered to HHSC upon expiration or termination of this Agreement. HHSC, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled or conceived by the CONTRACTOR pursuant to this Agreement.

25. INSURANCE. During the term of this Agreement, CONTRACTOR shall maintain at all times or cause to be maintained general and professional liability insurance coverage for CONTRACTOR and its employees rendering services to HHSC under this Agreement. The insurance policies shall be issued by a company or companies authorized to do business in Hawaii and approved by HHSC, with combined single limits of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence and THREE MILLION DOLLARS (\$3,000,000) in the aggregate, or such greater amount as may be required from time to time by HHSC. HHSC shall receive not less than thirty (30) days notice prior to any cancellation or material change or reduction in coverage. No such material change or reduction may be made without approval from HHSC. HHSC shall be listed as an additional insured on all policies. Prior to the commencement of this Agreement, CONTRACTOR shall provide HHSC with a certificate of insurance. Thereafter, prior to the expiration of each policy period, the CONTRACTOR shall provide HHSC with certificates of insurance evidencing the foregoing coverage and provisions. HHSC reserves the right to request a certified copy of the policies. CONTRACTOR shall also carry workers' compensation insurance for CONTRACTOR'S employees in the amounts required by applicable law. Failure to maintain the necessary insurance in accordance with the provisions set forth herein shall constitute a material breach of this Agreement and HHSC shall thereafter have the option of pursuing remedies for such breach and/or immediate termination of this Agreement.

26. LIENS AND WARRANTIES.

- a. Liens. All products provided under this Agreement shall be free of all liens and encumbrances.
- b. Warranties for products and services. In the event this Agreement is for the provision of products (goods or equipment), CONTRACTOR warrants that it has all rights, title and interest in and to all products sold, leased or licensed to HHSC. CONTRACTOR also warrants that the products shall substantially conform to all descriptions, specifications, statements of work and representations set forth in the Agreement, schedules, publications of CONTRACTOR and/or any order(s), and will be free from defects in materials, performance, workmanship and design. CONTRACTOR further warrants that it will perform any services required with promptness, diligence and in accordance with prevailing standards in the industry to the reasonable satisfaction of HHSC. The Warranty period shall commence after Acceptance,

as defined in this Agreement. Any specific warranty periods shall be as set forth in the proposals, schedules, orders or Special Conditions pertaining to this Agreement but in any event such warranty period shall not be less than one (1) year.

27. ACCESS TO BOOKS AND RECORDS AND AUDIT BY HHSC.

If the value or cost of Services rendered to HHSC pursuant to this Agreement is Ten Thousand Dollars (\$10,000.00) more over a twelve-month period, CONTRACTOR agrees as follows:

- a. Until the expiration of four (4) years after the furnishing of such services, CONTRACTOR shall, upon written request, make available to the Secretary of the Department of Health and Human Services (the "Secretary"), the Secretary's duly-authorized representative, the Comptroller General, or the Comptroller General's duly-authorized representative, such books, documents, and records as may be necessary to certify the nature and extent of the cost of such Services; and
- b. If any such Services are performed by way of subcontract with another organization and the value or cost of such subcontracted Services is Ten Thousand Dollars (\$10,000.00) or more over a twelve month period such subcontract shall contain and CONTRACTOR shall enforce a clause to the same effect as paragraph 26.a, above.
- c. The availability of CONTRACTORS' books, documents and records shall be subject to all applicable legal requirements, including such criteria and procedures for obtaining access that may be promulgated by the Secretary. The provisions of paragraph 26.a and 26.b shall survive the expiration or other termination of this Agreement regardless of the cause of such termination.
- d. HHSC may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor or prospective subcontractor which are related to this Agreement. HHSC may utilize third-party agents to conduct an audit and/or analysis of CONTRACTOR'S records related to quotes, proposals, orders, invoices, sales reports, expenses charged to HHSC, sales reports, and discounts related to this Agreement and or proposed amendment to this Agreement. Any such agents will be bound by the same confidentiality clauses as stated in this Agreement.

28. ANTITRUST CLAIMS.

The HHSC and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to HHSC any and all claims for overcharges as to goods and materials purchased in connection with this Agreement, except as to overcharges which result from violations commencing after the price is established under this Agreement and which are not passed on to the HHSC under an escalation clause.

- 29. DISCOUNT AND REBATE.** CONTRACTOR hereby acknowledges its obligations to comply with any and all requirements imposed upon it as a seller under 42 U.S.C. Sec. 1320a-7b(b)(3)(A) and 42 C.F.R. Sec. 1001.952(h) Discounts.
- 30. GOVERNING LAW.** The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a State court of competent jurisdiction in Hawaii.
- 31. COMPLIANCE WITH LAWS.** The CONTRACTOR shall comply with all federal, State, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Agreement. Other laws which may be applicable to contractors include, but are not limited to: HRS Chapters 383, 386, 387, and 393. It shall be the responsibility of the CONTRACTOR to determine applicability and comply with the law.
- 32. ACCESS TO HHSC NETWORK AND SYSTEMS.** CONTRACTOR may be given access to some of the HHSC computer network and systems in order to fulfill the terms of the Agreement. CONTRACTOR agrees to follow and to require all agents, employees and subcontractors to also follow the Information Technology and Confidentiality policies summarized and posted on the HHSC Procurement internet site (www.hhsc.org/GC) and to comply with such other instructions as provided by HHSC in the use of HHSC computer systems. CONTRACTOR shall not use the HHSC systems or data for any purpose other than to fulfill its duties under this Agreement.
- 33. CAMPAIGN CONTRIBUTIONS.** CONTRACTOR acknowledges that it is unlawful under Section 11-355, Hawaii Revised Statutes, unless specifically permitted under that law, for CONTRACTOR at any time between the execution of this Agreement through the completion of the Agreement to: (a) directly or indirectly make any contribution or to promise expressly or impliedly to make any contribution to any political party, committee or candidate or to any person for any political purpose or use; or (b) knowingly solicit any such contribution from any person for any purpose during any period.
- 34. ENTIRE AGREEMENT.** This Agreement sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the HHSC and the CONTRACTOR relative to this Agreement. This Agreement supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the HHSC and the CONTRACTOR other than as set forth or as referred to herein.
- 35. COUNTERPARTS.** This Agreement may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document. Such executions may be transmitted to the parties by facsimile or electronically and such facsimile or electronic execution and transmission shall have the full force and effect of an original signature. All fully executed counterparts, whether original executions or facsimile/electronic executions or a combination thereof, shall be construed together and shall constitute one and the same Agreement.
- 36. SEVERABILITY.** In the event that any provision of this Agreement is declared invalid or unenforceable by a court, such invalidity or non-enforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.
- 37. WAIVER.** The failure of HHSC to insist upon strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of HHSC's right to enforce the same in accordance with this Agreement. The fact that HHSC specifically refers to one provision of the law, and does not include other provisions shall not constitute a waiver or relinquishment of HHSC's rights or the CONTRACTOR's obligations under the law.
- 38. ACCEPTANCE OF GOODS AND SERVICES.** HHSC shall accept goods and services or give CONTRACTOR notice of rejection within a reasonable time, notwithstanding any payment, prior test, or inspection. No inspection, test, delay or failure to inspect or test, or failure to discover any defect or other nonconformance with the specifications, shall relieve CONTRACTOR of any obligations under this Agreement or impair any rights or remedies of HHSC.
- 39. OBSOLETE PARTS/LONG TERM PARTS AVAILABILITY (Goods and Equipment Agreements Only).** CONTRACTOR shall timely report on the status of end of life (EOL) hardware that has been procured for the purchased or leased product. EOL hardware includes the following: electronic components/piece parts and mechanical hardware. CONTRACTOR shall provide advanced notification in writing to the Technical Representative of any changes to tooling, facilities, materials, availability of parts, or processes that could affect the contracted product. This includes but is not limited to fabrication, assembly, handling, inspection, acceptance, testing, facility relocation, or introduction of a new manufacturer. CONTRACTOR shall notify the HHSC Technical Representative of any pending or contemplated future action to discontinue articles purchased or replacement parts for the articles purchased pursuant to this Agreement and shall work with HHSC to determine the need to stockpile any parts for the likely life of the product and offer those parts to HHSC prior to the actual discontinuance. CONTRACTOR shall extend opportunities to HHSC to place last time buys of such articles with deliveries not to exceed twelve months after the last time buy date.
- 40. DISPUTES.** Prior to resorting to any remedies allowed by law, disputes between the CONTRACTOR and HHSC arising out of this Agreement shall first be addressed in a telephonic or in-person meeting between the HHSC Technical Representative or designee and the

CONTRACTOR'S representative. If the issue is not resolved to the mutual satisfaction of the Parties, a HHSC Regional CFO shall hold a telephonic or in-person meeting with the manager of the CONTRACTOR'S representative. Both Parties shall discuss and attempt to resolve the issues in good faith.

END OF GENERAL CONDITIONS

SPECIAL CONDITIONS

1. **Conflict of Interest:** The Contractor shall not undertake any work that represents a potential conflict of interest, or which is not in the best interest of HHSC or the State without prior written approval by HHSC. The Contractor shall fully and completely disclose any situation that may present a conflict of interest. If the Contractor is now performing or elects to perform during the term of this contract any services for any HHSC health plan, provider or Contractor or an entity owning or controlling same, the Contractor shall disclose this relationship prior to accepting any assignment involving such party.

2. **Contract:**
 - 2.1 The contract between HHSC and the contractor shall consist of (1) the Request for Proposal (RFP) and any amendments thereto, and (2) the proposal submitted by the contractor in response to the RFP. In the event of a conflict in language between the two documents referenced, the provisions and requirements set forth and/or referenced in the RFP shall govern. However, HHSC reserves the right to clarify any contractual relationship in writing, and such written clarification shall govern in case of conflict with the applicable requirements stated in the RFP or the contractor's proposal. In all other matters not affected by the written clarification, if any, the RFP shall govern.

 - 2.2 The contract shall be construed according to the laws of the State of Hawaii. The State of Hawaii is not obligated for the expenditures under the contract until funds have been encumbered.

3. **Disclosure of Confidential Information:** The Contractor shall not, without prior written approval from the Contracting Officer, either during or after the performance of the services required by this contract, use, other than for such performance, or disclose to any person other than HHSC personnel with a need to know, any information, data, material, or exhibits created, developed, produced, or otherwise obtained during the course of the work required by this contract. This nondisclosure requirement shall also pertain to any information contained in reports, documents, or other records furnished to the Contractor by HHSC.

4. **Effective Date:** The effective date of this contract shall be the date that the Contracting Officer signs the Offer and Award page of this document unless otherwise stated in this document.

5. **Term of Contract and Option to Renew:**
 - 5.1 The initial term of this contract shall be for one (1) initial year with two (2) one-year option to extend, not to exceed a total contracting period of three (3) years. The terms and conditions of any such contract extension shall remain the same as the original contract, as amended. All contract extensions shall be through contract amendment, and shall be at the sole discretion of HHSC. If a facility purchases an extended warranty from the Contractor, such warranty shall be reflected in a separate written agreement between HHSC and the Contractor having a term equal to the term of the extended warranty and containing terms acceptable to both parties.

 - 5.2 When the Contracting Officer issues an amendment to extend the contract, the provisions of such extension will be deemed to have been accepted 60 days after the date of mailing by the Contracting Officer, even if the extension amendment has not been signed by the Contractor, unless within that time the Contractor notifies the Contracting Officer in writing that it refuses to sign the extension amendment. If the Contractor provides such notification, the Contracting Officer will initiate contract termination proceedings.

 - 5.3 If the Contractor chooses not to renew this contract, the Contractor may be liable for certain costs associated with the transition to a different Contractor. If the Contractor provides the Contracting Officer written notice of its intent not to renew this contract at least 180 days before its expiration, this liability for transition costs may be waived by the Contracting Officer.

6. **Termination - Availability of Funds:** Funds are not presently available for performance under this contract beyond the current fiscal year. No legal liability on the part of HHSC for any payment may arise under this contract until funds are made available for performance of this contract. HHSC shall make reasonable efforts to secure such funds.

7. Insurance Requirements:

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The *insurance requirements* herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Hawaii in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

7.1 Minimum Scope and Limits of Insurance: Contractor shall provide coverage with limits of liability not less than those stated below.

7.1.1 Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.

• General Aggregate	\$1,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Blanket Contractual Liability – Written and Oral	\$1,000,000
• Fire Legal Liability	\$ 50,000
• Each Occurrence	\$1,000,000

7.1.1.1 The policy shall be endorsed to include the following additional insured language: ***“The State of Hawaii, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.”***

7.1.1.2 Policy shall contain a waiver of subrogation against HHSC, and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

7.1.2 Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

The policy shall be endorsed to include the following additional insured language: ***“The State of Hawaii, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor.”***

7.1.3 Professional Liability (Errors and Omissions Liability)

Each Claim	\$1,000,000
Annual Aggregate	\$1,000,000

7.1.3.1 In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

7.1.3.2 Policy shall contain a waiver of subrogation against the State of Hawaii, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

7.1.3.3 The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Specifications of this contract.

7.2 Additional Insurance Requirements: The policies shall include, or be endorsed to include, the following provisions:

7.2.1. The State of Hawaii, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

7.2.2 The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.

7.2.3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

7.3. Notice of Cancellation: Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to HHSC. Such notice shall be sent directly to **HHSC, East Hawaii Region Chief Procurement Officer, 1190 Waiianuenue Avenue, Hilo, Hawaii 96720** and shall be sent by certified mail, return receipt requested.

7.4. Acceptability of Insurers: Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Hawaii with an "A.M. Best" rating of not less than A- VII. The State of Hawaii in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

7.5 Verification of Coverage: Contractor shall furnish the State of Hawaii with certificates of insurance (ACORD form or equivalent approved by the State of Hawaii) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the State of Hawaii before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to the Point of Contact named in **Section 1, Subsection 1.4, Point of Contact**. HHSC project/contract number and project description shall be noted on the certificate of insurance. HHSC reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

7.6. Exceptions: In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Hawaii agency, board, commission, or university, none of the above shall apply.

HMC BUSINESS ASSOCIATE ADDENDUM**1. BUSINESS ASSOCIATE'S OBLIGATIONS.**

BUSINESS ASSOCIATE agrees to:

- a. Not use or disclose PHI other than as permitted or required by the Addendum or as Required By Law. In no event may BUSINESS ASSOCIATE use or further disclose PHI in a manner that would violate HIPAA if done by HMC.
- b. Not use PHI to create de-identified information for purposes unrelated to the underlying contract to which this Addendum is attached ("Contract") without HMC's advance approval. BUSINESS ASSOCIATE will use and request only the minimum PHI necessary to accomplish the permissible purpose of the use or request and shall comply with the minimum necessary standard under 45 C.F.R. § 164.502(b), as amended from time to time.
- c. Implement appropriate safeguards, and comply, where applicable, with the Security Rule to ensure the confidentiality, integrity, and availability of all PHI the BUSINESS ASSOCIATE creates, receives, maintains, or transmits on behalf of HMC; protect against any reasonably anticipated threats or hazards to the security or integrity of PHI; prevent use or disclosure of PHI other than as provided for by this Addendum or as Required by Law; and ensure compliance with the HIPAA Rules by BUSINESS ASSOCIATE's Workforce. These safeguards include, but are not limited to:
 - (i) Administrative Safeguards. BUSINESS ASSOCIATE shall implement policies and procedures to prevent, detect, contain, and correct security violations, and reasonably preserve and protect the confidentiality, integrity, and availability of EPHI, as required by 45 C.F.R. § 164.308, and enforcing those policies and procedures, including sanctions for anyone not found in compliance;
 - (ii) Technical and Physical Safeguards. BUSINESS ASSOCIATE shall implement appropriate technical safeguards, as required by 45 C.F.R. §§ 164.310 and 164.312, to protect PHI, including access controls, authentication, and transmission security, as well as implement appropriate physical safeguards to protect PHI, including workstation security and device and media controls; and
 - (iii) Training. BUSINESS ASSOCIATE shall provide training to its relevant Workforce members, including its management employees, on how to prevent the improper access, use or disclosure of PHI; and update and repeat training on a regular basis. For purposes of this Addendum, "relevant Workforce members" means BUSINESS ASSOCIATE's employees, volunteers, trainees, and other persons whose conduct, in the performance of work for BUSINESS ASSOCIATE: (1) is under the direct control of the BUSINESS ASSOCIATE, whether they are paid by BUSINESS ASSOCIATE and (2) involves direct access to PHI.
- d. Within ten (10) days of signing this Addendum, BUSINESS ASSOCIATE shall provide HMC with a list of individual employees and subcontractors who will require access to HMC's electronic and computer systems in order to perform duties pursuant to the Contract. BUSINESS ASSOCIATE shall require all such persons to execute additional confidentiality documentation, as may be required by HMC, prior to receiving such access. If any such

person terminates employment or contract status with BUSINESS ASSOCIATE or its

subcontractors, BUSINESS ASSOCIATE shall notify HMC no later than **five (5) business days** in advance of same, or in any event immediately upon termination, so that HMC may terminate the individual's access to HMC's systems.

- e. In accordance with 45 C.F.R. §164.316, document the required policies and procedures and keep them current, and shall cooperate in good faith in response to any reasonable requests from HMC to discuss, review, inspect, and/or audit BUSINESS ASSOCIATE's safeguards. BUSINESS ASSOCIATE shall retain the documentation required for six (6) years from the date of its creation or the date when it last was in effect, whichever is later.
- f. Ensure that any subcontractor of BUSINESS ASSOCIATE that creates, receives, maintains, or transmits PHI on behalf of BUSINESS ASSOCIATE agrees in writing to the same restrictions, conditions and requirements that apply to BUSINESS ASSOCIATE through this Addendum with respect to such PHI.
- g. Notify HMC following discovery of any use or disclosure of PHI not permitted by this Addendum of which it becomes aware, or any Breach of Unsecured PHI.
 - (i) BUSINESS ASSOCIATE shall immediately notify HMC verbally or by telephone within 24 hours of its discovery or disclosure in violation of this Addendum.
 - (ii) BUSINESS ASSOCIATE shall subsequently notify HMC in writing, without unreasonable delay, and in no case later than two (2) business days following discovery of the impermissible use or disclosure of PHI, or Breach of Unsecured PHI.
 - (iii) A Breach of Unsecured PHI shall be treated as discovered by the BUSINESS ASSOCIATE as of the first day on which such breach is known to the BUSINESS ASSOCIATE or, by exercising reasonable diligence, would have been known to the BUSINESS ASSOCIATE. BUSINESS ASSOCIATE shall be deemed to have knowledge of a Breach if the Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or other agent of the BUSINESS ASSOCIATE.
- h. Take prompt (but in any event not more than two (2) business days) corrective action to mitigate, to the extent practicable, any harmful effect that is known to BUSINESS ASSOCIATE of a Security Incident or a misuse or unauthorized disclosure of PHI by BUSINESS ASSOCIATE in violation of this Addendum, and any other action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. BUSINESS ASSOCIATE shall reasonably cooperate with HMC's efforts to seek appropriate injunctive relief or otherwise prevent or curtail potential or actual Breaches, or to recover its PHI, including complying with a reasonable corrective action plan.
- i. Investigate such Breach and provide to HMC a written report of BUSINESS ASSOCIATE'S investigation and resultant mitigation within thirty (30) calendar days of the discovery of the Breach.
- j. Provide the following information with respect to a Breach of Unsecured PHI, to the extent possible, as the information becomes available, to HMC's HIPAA Privacy and/or Security Officer:

- (i) The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by BUSINESS ASSOCIATE to have been accessed, acquired, used, or disclosed during the Breach; and
- (ii) Any other available information that HMC is required to include in notification to the Individual under the HIPAA Rules, including, but not limited to the following:
 - A. Contact information for Individuals who were or who may have been impacted by the Breach (e.g., first and last name, mailing address, street address, phone number, and email address);
 - B. A brief description of the circumstances of the Breach, including the date of the Breach and date of discovery, if known;
 - C. A description of the types of Unsecured PHI involved in the Breach (such as whether the full name, social security number, date of birth, address, account number, diagnosis, diagnostic, disability or billing codes, or similar information was involved);
 - D. A brief description of what the BUSINESS ASSOCIATE has done or is doing to investigate the Breach, mitigate harm to the Individual(s) impacted by the Breach, and protect against future Breaches; and
 - E. Contact information for BUSINESS ASSOCIATE's liaison responsible for investigating the Breach and communicating information relating to the Breach to HMC.
- k. Promptly report (but in any event not more than two (2) business days) to HMC any Security Incident of which BUSINESS ASSOCIATE becomes aware with respect to EPHI that is in the custody of BUSINESS ASSOCIATE, including breaches of Unsecured PHI as required by 45 C.F.R. § 164.410, by contacting HMC's HIPAA Privacy and/or Security Officer.
- l. Implement reasonable and appropriate measures to ensure compliance with the requirements of this Addendum by Workforce members who assist in the performance of functions or activities on behalf of HMC under this Addendum and use or disclose PHI, and discipline such Workforce members who intentionally violate any provisions of these special conditions, which may include termination of employment.
- m. Make its internal policies, procedures, books and records relating to the use and disclosure of PHI received from, or created or received by BUSINESS ASSOCIATE on behalf of, HMC available to the Secretary or to HMC if necessary or required to assess BUSINESS ASSOCIATE's or HMC's compliance with the HIPAA Rules. BUSINESS ASSOCIATE shall promptly notify HMC of communications with the U.S. Department of Health and Human Services ("HHS") regarding PHI provided by or created by HMC and shall provide HMC with copies of any information BUSINESS ASSOCIATE has made available to HHS under this paragraph.
- n. Upon notice from HMC, accommodate any restriction to the use or disclosure of PHI and any request for confidential communications to which HMC has agreed in accordance with the Privacy Rule.
- o. Make available PHI held by BUSINESS ASSOCIATE, which HMC has determined to be part of its Designated Record Set, within five (5) days to HMC as necessary to satisfy HMC's obligations to provide an Individual with access to PHI under 45 C.F.R. § 164.524, as amended from time to time, in the manner designated by HMC. In the event any individual requests access to PHI directly from BUSINESS ASSOCIATE, BUSINESS ASSOCIATE shall

within two (2) days forward such request to HMC. Any decision to deny access to PHI requested by an individual shall be made only by HMC.

- p. Make available PHI held by BUSINESS ASSOCIATE, which HMC has determined to be part of its Designated Record Set, for amendment and incorporate any such amendments to PHI that HMC directs or agrees to in accordance with 45 CFR § 164.526, as amended from time to time, within five (5) days receipt of a request from HMC or an Individual.
- q. Document disclosures of PHI made by BUSINESS ASSOCIATE, which are required to be accounted for under 45 C.F.R. § 164.528(a)(1), and within ten (10) days of notice by HMC to BUSINESS ASSOCIATE that HMC has received a request for an accounting of disclosures of PHI regarding an Individual made during a period of time less than six (6) years prior to the date on which the accounting was requested, BUSINESS ASSOCIATE shall make available to HMC such information as is in BUSINESS ASSOCIATE's possession and is required for HMC to make the accounting required by 45 C.F.R. § 164.528, as amended from time to time. At a minimum, BUSINESS ASSOCIATE shall provide HMC with the following information: (1) the date of the disclosure; (2) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (3) a brief description of the PHI disclosed; and (4) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to BUSINESS ASSOCIATE, BUSINESS ASSOCIATE shall within two (2) days forward such request to HMC. It shall be the responsibility of HMC to prepare and deliver any such accounting requested. BUSINESS ASSOCIATE hereby agrees to implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section.

2. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

BUSINESS ASSOCIATE may, except as otherwise limited in this Addendum:

- a. General Use and Disclosure: Create, receive, maintain or transmit PHI only to provide the purchased product or service described in the Contract to perform its obligations under the Contract, or in furtherance of its business relationship with HMC as described the Contract, as applicable and this Addendum, provided that the use or disclosure would not violate the HIPAA Rules if done by HMC.
- b. Limited Use of PHI for BUSINESS ASSOCIATE's Benefit. Use PHI received by the BUSINESS ASSOCIATE in its capacity as HMC's BUSINESS ASSOCIATE, if necessary, for the proper management and administration of BUSINESS ASSOCIATE or to carry out the legal responsibilities of BUSINESS ASSOCIATE. BUSINESS ASSOCIATE's proper management and administration does not include the use or disclosure of PHI by BUSINESS ASSOCIATE for marketing purposes or for sale of PHI.
- c. Limited Disclosure of PHI for BUSINESS ASSOCIATE's Benefit. Disclose PHI for BUSINESS ASSOCIATE's proper management and administration or to carry out its legal responsibilities only if the disclosure is Required By Law, or BUSINESS ASSOCIATE obtains reasonable assurances from the person or entity to whom PHI is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person or entity, and the person notifies BUSINESS ASSOCIATE of any instances of which it is aware in which the confidentiality of PHI has been breached.

- d. Minimum Necessary. BUSINESS ASSOCIATE shall only request, use, and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use, or disclosure.
- e. Data Aggregation. Use PHI to provide Data Aggregation services relating to HMC's Health Care Operations as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
- f. Disclosures by Whistleblowers: Use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

3. HMC'S OBLIGATIONS.

- a. HMC shall not request BUSINESS ASSOCIATE to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by HMC.
- b. HMC shall not provide BUSINESS ASSOCIATE with more PHI than is minimally necessary for BUSINESS ASSOCIATE to perform its obligations as described in the Contract only in accordance with the HIPAA Rules.

4. TERM AND TERMINATION.

- a. This Addendum shall be effective as of the date of the Contract, and shall continue in effect until terminated as provided in Section 4.b or until all of the PHI provided by HMC to BUSINESS ASSOCIATE, or created or received by BUSINESS ASSOCIATE on behalf of HMC, is destroyed or returned to HMC.
- b. Termination for Cause. In the event HMC determines that BUSINESS ASSOCIATE has committed a material breach of this Addendum, HMC may, in its discretion, either: (i) provide an opportunity for BUSINESS ASSOCIATE to cure the breach or end the violation, provided that HMC may immediately terminate the Contract that requires the use of PHI if BUSINESS ASSOCIATE does not cure the breach or end the violation within the time frame specified by HMC; or (ii) immediately terminate the Contract that requires the use of PHI if BUSINESS ASSOCIATE has breached a material term of this Addendum and HMC determines in its sole discretion that a cure is not possible.
- c. Effect of Termination.
 - (i) Upon any termination of this Addendum, until notified otherwise by HMC, BUSINESS ASSOCIATE shall extend all protections, limitations, requirements and other provisions of this Addendum to all PHI received from or on behalf of HMC or created or received by BUSINESS ASSOCIATE on behalf of HMC.
 - (ii) Except as otherwise provided in subsection 4(c)(iii) below, upon termination of this Addendum for any reason, BUSINESS ASSOCIATE shall, at HMC's option, return or destroy all PHI received from HMC, or created or received by the BUSINESS ASSOCIATE on behalf of, HMC that the BUSINESS ASSOCIATE still maintains in any form, and BUSINESS ASSOCIATE shall retain no copies of the information. This provision shall also apply to PHI that is in the possession of subcontractors or agents of BUSINESS ASSOCIATE. BUSINESS ASSOCIATE shall notify HMC in writing of any and all conditions

that make return or destruction of such information not feasible and shall provide HMC with any requested information related to HMC's determination as to whether the return or destruction of such information is feasible.

(iii) If HMC determines that returning or destroying any or all PHI is not feasible or opts not to require the return or destruction of such information, the protections of this Addendum shall continue to apply to such PHI, and BUSINESS ASSOCIATE shall limit further uses and disclosures of PHI to those purposes that make the return or destruction infeasible, for so long as BUSINESS ASSOCIATE maintains such PHI. HMC hereby acknowledges and agrees that infeasibility includes BUSINESS ASSOCIATE's need to retain PHI for purposes of complying with its work product documentation standards.

5. MISCELLANEOUS.

- a. Amendment. BUSINESS ASSOCIATE and HMC agree to take such action as is necessary to amend this Addendum from time to time for compliance with the requirements of the HIPAA Rules and any other applicable law.
- b. Interpretation. In the event that any terms of this Addendum are inconsistent with the terms of the Contract, then the terms of this Addendum shall control. In the event of an inconsistency between the provisions of this Addendum and mandatory provisions of the HIPAA Rules, as amended, the HIPAA Rules shall control. Where provisions of this Addendum are different than those mandated in the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this Addendum shall control. Any ambiguity in this Addendum shall be resolved to permit HMC to comply with the HIPAA Rules. Notwithstanding the foregoing, nothing in this Addendum shall be interpreted to supersede any federal or state law or regulation related to confidentiality of health information that is more stringent than the HIPAA Rules.
- c. Indemnification. BUSINESS ASSOCIATE shall defend, indemnify, and hold harmless HMC and HMC's officers, employees, agents, contractors and subcontractors to the extent required under the Contract for incidents that are caused by or arise out of a Breach or failure to comply with any provision of this Addendum or the HIPAA Rules by BUSINESS ASSOCIATE or any of BUSINESS ASSOCIATE's officers, employees, agents, contractors or subcontractors.
- d. Costs Related to Breach. BUSINESS ASSOCIATE shall be responsible for any and all costs incurred by HMC as a result of any Breach of PHI by BUSINESS ASSOCIATE, its officers, directors, employees, contractors or agents, or by a third party to which the BUSINESS ASSOCIATE disclosed PHI under this Addendum, including but not limited to notification of individuals or their representatives of a Breach of Unsecured PHI, and the cost of mitigating any harmful effect of the Breach.
- e. Response to *Subpoenas*. In the event BUSINESS ASSOCIATE receives a *subpoena* or similar notice or request from any judicial, administrative or other party which would require the production of PHI received from, or created for, HMC, BUSINESS ASSOCIATE shall promptly forward a copy of such *subpoena*, notice or request to HMC to afford HMC the opportunity to timely respond to the demand for its PHI as HMC determines appropriate according to its federal and state obligations.

- f. Survival. The respective rights and obligations of HMC and BUSINESS ASSOCIATE under sections 4.c., Term and Termination, 5.c., Indemnification, and 5.d., Costs Related to Breach, shall survive the termination of this Addendum.
- g. Notices: Whenever written notice is required by one Party to the other under this Addendum, it should be mailed, faxed or e-mailed, or any of the foregoing, to the appropriate address noted below. If notice is sent by e-mail, then a confirming written notice should be sent by mail or fax, or both, within two (2) business days after the date of the e-mail. The sender of any written notice required under this Addendum is responsible for confirming receipt by the recipient.

HMC
HIPAA Privacy Officer

BUSINESS ASSOCIATE

[1190 Waianuenu Ave

Hilo, HI 96720

Fax:808-933-2793

Email:cdunigan@hhsc.org

6. DEFINITIONS FOR USE IN THIS ADDENDUM

Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the Privacy Rule, Breach Notification Rule, or the Security Rule.

"Breach Notification Rule" shall mean the Breach Notification of Unsecured Protected Health Information Rule, 45 C.F.R. Part 164, Subparts A and D, as amended from time to time.

"Designated Record Set" shall mean a group of records maintained by or for HMC that is (1) the medical records and billing records about individuals maintained by or for HMC, (2) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (3) used, in whole or in part, by or for HMC to make decisions about individuals. As used herein, the term "Record" means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for HMC.

"Electronic Media" shall mean the mode of electronic transmissions. It includes the Internet, extranet (using Internet technology to link a business with information only accessible to collaborating parties), leased lines, dial-up lines, private networks, and those transmissions that are physically moved from one location to another using magnetic tape, disk, or compact disk media.

"Individually Identifiable Health Information" shall mean information that is a subset of health information, including demographic information collected from an individual, and:

- (1) is created or received by a healthcare provider, health plan, employer, or healthcare clearinghouse; and
- (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of healthcare to an individual; or the past, present, or future payment for the provision of healthcare to an individual; and
 - (a) that identifies the individual, or
 - (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

"Privacy Rule" shall mean the Standard for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164, Subparts A and E, as amended from time to time.

"Protected Health Information" (or "PHI") shall mean Individually Identifiable Health Information that is (1) transmitted by electronic media; (2) maintained in any medium constituting electronic media; or (3) transmitted or maintained in any other form or medium. "PHI" shall not include: education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. § 1232g; records described in 20 U.S.C. § 1232g (a)(4)(B)(iv); employer records; or information about an individual who has been deceased for more than 50 years.

"Secretary" shall mean the Secretary of the United States Department of Health and Human Services.

"Security Incident" shall mean any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

"Security Rule" shall mean the Security Standard for electronic Protected Health Information, 45 C.F.R. Parts 160 and 164, Subparts A and C, as amended from time to time.

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END OF RFP # 19-0007