

REQUEST FOR PROPOSALS

RFP No:
HHSC 22-0349

COMPETITIVE SEALED PROPOSALS
TO PROVIDE:

TELEHEALTH 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

Proposals for this Solicitation are due no later than
April 5, 2022
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:

Name: _____

Federal Employer Identification No.:

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. 22-0349

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	March 11, 2022
2.	Closing Date for Receipt of Questions	March 22, 2022
3.	Addendum - HHSC Response to Offerors’ Questions (if needed)	March 28, 2022
4.	Closing Date for Receipt of Proposals	April 8, 2022
5.	Proposal Evaluations	April 9-12, 2022
6.	Proposal Discussions (optional)	April 13-20, 2022
7.	Best and Final Offers (optional)	April 21-27, 2022
9.	Contractor Selection/Award Notification (on/about)	April 28, 2022
10.	Contract Tentative Award Date	April 29, 2022
11.	Contract Tentative Start Date	September 1, 2022

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: EVALUATION

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

SECTION 5: 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 **primary 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:

Sam Nelson, Regional Compliance and Contracts Officer
East Hawaii Region, HHSC
1190 Waianuenue Avenue, Hilo, HI 96720
PH: (808) 932-3113 FAX: (808) 933-2793
E-mail: snelson1@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 oversees the operation of twelve public health facilities throughout the Hawaiian Island chain, including Oahu, Lanai, Maui, Kauai, and Hawaii.

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, and is the only acute care provider on the Islands of Maui and Lanai. In fiscal year 2009, HHSC had a total of 3,892 full time employees, operating 1,260 licensed beds, located on five different islands, with approximately 22,378 in-patient admissions.

1.5.3 MISSION

The mission of HHSC is to provide and enhance accessible, comprehensive health care services that are quality-driven, customer-focused, and cost-effective.

1.6 FACILITY INFORMATION

Detailed information pertaining to HHSC facilities is located at <http://www.hhsc.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 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:

Sam Nelson, Regional Compliance and Contracts Officer
East Hawaii Region, HHSC,
1190 Waianuenue Ave., Hilo, HI 96720
Fax: (808) 933-2793
Email: snelson1@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, Sam Nelson, Regional Compliance and Contracts Officer, 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:

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

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 Waianuenu Avenue
Hilo, Hawaii 96720

SECTION 2
STATEMENT OF WORK

2.1 BACKGROUND

The East Hawaii Region of Hawaii Health Systems Corporation is composed of Hilo Medical Center, associated clinics and critical access hospitals (CAH)s. Hilo Medical Center is the largest facility in the Hawaii Health Systems Corporation (HHSC). Established in 1897, HMC has grown from a 10-bed hospital erected by the Hawaiian Government into the present facility of 190 licensed beds. Current capacity includes 166 licensed acute care beds plus an additional 24 acute care beds under a temporary license. Total count includes a 12 bed psychiatric unit, and a separate 45 bed licensed skilled nursing facility. Also on the campus are the East Hawaii Cancer Center, and the Yukio Okutsu Veterans Center.

Hilo Medical Center is an active teaching site and currently has nursing and pharmacy students in training from University of Hawaii at Hilo as well as Hawaii Community College. Hilo Medical Center also has its own stand-alone 3 year Family Medicine Residency Program with a total complement of 15 residents.

Patient services include:

24-hour Emergency Care

Level 3 Trauma Center

Critical Care Service

General Medical Services

Medical specialty services including Gastroenterology, Cardiology, Orthopedics and Neurology

General Surgery Services

Surgical specialty services including Urology, ENT and Vascular surgery.

CT, MRI and Interventional Radiology services.

Hematology/Oncology.

During Fiscal Year 2021, HMC provided the following acute care services.

Total admits - 9,496

Average daily admits - 20.3 (note: including Psych, excluding Newborn, Observation, SNF & ICF)

ED psychiatric visits - 11,272

Pediatric Psych visits - 253

Dialysis visits - 1,901

2.2 Agreement start date and agreement term

The East Hawaii Region (EHR) is seeking a contract for the provision of specialist telehealth consultation services for emergent and non-emergent conditions encountered in the Emergency Department, Acute Care Units (including the Behavioral Health Unit and Dialysis Unit) and outpatient clinics at Hilo Medical Center. In FY 21, emergency visits totaled 41,310 for Hilo. The expected start date for commencement of services under this request would be October 1, 2022. The contract award will be for two years with two, one-year options.

2.3 Scope of services.

The Contractor shall provide telehealth services for EHR's Hilo Medical Center, and associated clinics. Subject to the terms stated in the HHSC General Conditions included with this RFP, the Contractor shall employ or subcontract with qualified health care providers to provide the Services. These providers will need to be licensed in the State of Hawaii and credentialed at Hilo Medical Center and associated facilities.

1. The East Hawaii Region (EHR) is requesting implementation of Behavioral Health services that would be available on an on call/emergent basis for our Emergency Department, providing consult/assessment, and either discharge or admittance orders to HMC's inpatient psychiatric Behavioral Health Unit. The contractor will need to provide adequate number of licensed and credentialed providers in the State of Hawaii in order to be able to provide clinical coverage 24/7, 365 days per year. Current level of emergency department psychiatric consults is approximately 32 adult assessments per 24-hour period and .7 Pediatric screenings or 21 per month. Pediatrics are screened for discharge or possible transfer but do not require admission management. These screenings can be scheduled and will occur during normal business hours.
 - Pricing structures for ED coverage should include both per use and 24 hour rate
 - On occasion, preadmission screening and resident review (PASSR) outpatient services will be required for the EHR. Pricing should be provided on per use basis

2. The EHR also seeks to establish a virtual multi-specialty telehealth consult services for inpatient acute care patients and outpatient clinics with the following provider services: endocrinology, rheumatology, hematology, infectious disease, dermatology, wound care, nephrology, and immunology. These services would be consultations with licensed and credentialed board eligible or board certified providers to include initial evaluation, diagnosis and treatment with follow-up when needed.
 - Pricing structures should include service specific case rate paid to vendor or vendor bills patient's insurance provider with reconciliation. with customer at some periodic interval. We are open to considering other pricing structures

Relevant information for proposal:

1. Response is desired within 30 minutes to all ED and inpatient consults. Clinic consultations will be scheduled during an agreed upon block of time.
2. The Emergency Department physician shall maintain responsibility for the patient while the patient is located in the Emergency Department and the contracted tele-health provider shall assume responsibility for the patient upon the patient's physical admission to the inpatient psychiatric care area (Behavioral Health Unit), until care is assumed by the EHR inpatient psychiatrist.
3. Utilizing the existing Electronic Health Record for viewing documentation and order entry is required.
4. Expectation is for completion of all documentation in a timely manner and in keeping with the policies and procedures of the East Hawaii Region, its medical staff, and professional standards of practice.
5. Meet provider or programmatic quality metrics such as; diagnosis accuracy, accepting provider satisfaction with telemedicine services provided, efficient use of time, integration into workflow, patient presentation skills, proper video etiquette and overall patient satisfaction with telemedicine services.
6. In some instances, CONTRACTOR's providers shall, along with the (Hawaii Emergency Physicians Association) HEPA Emergency Department physicians, co-manage patients who the East Hawaii Region are not equipped and/or staffed to manage until transfer to a site offering the needed service(s) can be arranged. Such co-management shall consist of the performance of a consultation and actively participating in writing orders necessary for the management and stabilization of the patient while transfer arrangements are made. The Physician and on duty emergency department physician shall at all times collaborate in the co-management of such patients in acknowledgement of the fact that such patients require a level of care not locally available and should not be admitted to the East Hawaii Region if at all possible. The CONTRACTOR'S consultant will assist the HEPA ED physician in facilitating transfers if the ED physician makes unsuccessful attempts to transfer. Pediatric and Adolescent behavioral health admission frequently will require co-management in this manner when local specialists and services are not available.
7. Proposals should address how the offeror will meet the requirements of this Statement of Work as well as detail on:
 - a. Description of type of device and integration to provide services,, online workflow, payments, and health device integration.
 - b. Training and implementation support detail, including whether training is live, or online, individual or group sessions, or online webinars. Also provide detail on training manuals, customizable quick guides, etc.
 - c. Address support protocol, as well as typical support problems, and experienced downtime. Provide how responses are provided (phone, email, txt), and response time (assuming 1 hour is industry standard)
 - d. Experience in implementation of Telehealth procedures relative to customization of clinical templates,order sets, documentation templates, medication regimes, etc. as required for cohesive patient and clinician engagement.
 - e. Offerors are requested to propose their preferred billing arrangement (e.g one all inclusive billing for all inclusive service, or service fee to hospital with providers billing for services directly). Psychiatric services are required as a minimum baseline requirement. Other services will be added as demand dictates. For services

other than Psychiatric consults, Offeror to provide a minimum number of encounters needed to provide the optional services.

2.5 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.

2.6 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 within a deadline mutually agreed upon with HOSPITAL.

2.7 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.

2.8 EAST HAWAII REGION RESPONSIBILITIES

The East Hawaii Region shall provide:

2.13.1. Document/Data: Access to all documents and data required for the efficient performance of services.

2.13.2. Technical Representatives, as described below in Section 2.9.

2.9 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 Representatives for this agreement are:

For Hospital, :

Kathleen Katt
East Hawaii Region,
Hilo Medical Center 1190 Waiuanue Avenue
Phone: (808) 932-3138
E-mail: kkatt@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.

Prepare proposals in three-ring binders, organized into distinctive sections, with tabs corresponding with the technical and price categories and other categories, as appropriate. 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). Alternate proposals will not be accepted. The Issuing Officer must receive one (1) original hard copies and one (1) electronic copy (on disk or jump drive) of the proposal 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” and copies shall be clearly marked “COPY”. Mail or deliver proposals to the following address:

Sam Nelson Regional Compliance and Contracts Officer
East Hawaii Region, HHSC,
1190 Waianuenue Ave., Hilo, HI 96720
Fax: 808- 932-3113
Email: snelson1@hhsc.org

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

“Proposal Submitted in Response to: RFP # HHSC FY22-0349”

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 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.

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. TECHNICAL APPROACH
- c. BACKGROUND, QUALIFICATIONS AND EXPERIENCE
- d. PERSONNEL ORGANIZATION AND STAFFING; and
- e. MANAGEMENT AND CONTROL.

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 TECHNICAL APPROACH

Provide details on offerors technical approach to achieving the requirements spelled out in the statement of work.

3.7.3 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, 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.
- 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.

3.7.4 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.

3.7.5 MANAGEMENT AND CONTROL

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. Coordination of requirements with HHSC personnel.

- c. Problems anticipated, if any.

3.8 PRICE PROPOSAL

The price proposal shall include the following categories:

- a. SUMMARY – Proposed pricing broken out into non-recurring startup costs, recurring costs, , and per case fee. Pricing to be broken out per facility (HMC, Kau, and Honokaa) Not To Exceed (NTE) and per case pricing.
- b. SUMMARY OFFER – NTE pricing inclusive of estimated travel & related expenses (if any required), in accordance with the State of Hawaii Travel Policy.

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.

3.8.3 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/cannot 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.

3.8.4 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.

3.8.5 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 is in Section 6, APPENDIX B

SECTION 4

COMPENSATION

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

	Psychiatry	Endocrinology	Nephrology	Rheumatology	Infectious diseases	Immunology
Non Recurring/Start up fees						
Annual Recurring Fee						
Per case fee						
Minimum monthly case count if applicable						
Total Not to exceed Pricing						
Contract Base Period 2 years						
Option 1- year 3						
Option 2 Year 4						

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 compensation, including all applicable taxes and expenses incurred, in accordance with and subject to the following:

4.2.1. The HOSPITAL shall pay CONTRACTOR at the above rates on a monthly basis in arrears unless otherwise noted subject to the prior receipt of the following written documentation, which must be included in the invoice for services:

- a. the Contract number, (#22-0349);
- 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 SIXTY (60) 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 in the Notice of Award to the selected Contractor.

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....Determination of Priority List of OFFERORS
- Phase 5.....Proposal Discussions by Priority-List (**optional**)
- Phase 6....Product Demonstrations (**optional**)
- Phase 7.....Best and Final Offers by Priority List (**optional**)
- Phase 8.....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
 - Technical Proposal
 - Personnel Organization and Staffing
 - Management and Control
 - 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 4.3 and the evaluation scoring system identified in paragraph 4.5.

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 4.3 and the evaluation scoring system identified in paragraph 4.4.

5.2.4 PHASE – 4, 5, &6 PROPOSAL DISCUSSIONS AND DEMONSTRATIONS 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 and conduct demonstrations 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 - 7 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 - 8 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
Background, Qualifications and Past Performance	20%
Technical Proposal	30%
Personnel Organization and Staffing.....	20%
Price Proposal.....	30%
TOTAL	100%

5.4 EVALUATION SCORING SYSTEM

The maximum number of points available for scoring is one hundred (100) 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 an **“Agreement for Goods or Services Based upon Competitive Sealed Proposals”** (hereinafter “CONTRACT”) by HHSC and the successful OFFEROR (hereinafter “CONTRACTOR”). This document 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 - PURCHASE OF GOODS AND SERVICES FROM HEALTHCARE SERVICE PROVIDERS,, APPENDICES D, E, AND F, are applicable and shall be part and whole and attached to the Agreement.

The GENERAL CONDITIONS – Purchase of Goods and Services from Healthcare providers, APPENDIX D 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 - PURCHASE OF GOODS AND SERVICES FROM HEALTHCARE SERVICE PROVIDERS**. 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 D**).

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 \$15.00.

6.4.2 CONTRACT EXECUTION

Upon receipt of the CONTRACT document, the 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.

6.4.3 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. Nelson:

(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 “**Telehealth Services**”, RFP # **HHSC FY22-0349**, 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) Original Hard Copy & one (1) electronic copy (on disk or jump drive) of Proposals.
<input type="checkbox"/>	<input type="checkbox"/>	Proposal Transmittal Cover Letter:
<input type="checkbox"/>	<input type="checkbox"/>	• Official Business Letterhead
<input type="checkbox"/>	<input type="checkbox"/>	• Authorized Signature
<input type="checkbox"/>	<input type="checkbox"/>	• Corporate Seal or Notarized
<input type="checkbox"/>	<input type="checkbox"/>	• Required Information
<input type="checkbox"/>	<input type="checkbox"/>	• Executed Offer and Acceptance (Page 3 of RFP)
<input type="checkbox"/>	<input type="checkbox"/>	•
<input type="checkbox"/>	<input type="checkbox"/>	Technical Proposal:
<input type="checkbox"/>	<input type="checkbox"/>	• Background, Qualifications and Experience
<input type="checkbox"/>	<input type="checkbox"/>	• Technical Proposal
<input type="checkbox"/>	<input type="checkbox"/>	• Personnel Organization and Staffing
<input type="checkbox"/>	<input type="checkbox"/>	• Management and Control
<input type="checkbox"/>	<input type="checkbox"/>	Cost Proposal:
<input type="checkbox"/>	<input type="checkbox"/>	• Summary
<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.

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1. **COORDINATION OF SERVICES BY THE 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 the Agreement. The CONTRACTOR shall communicate 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 or the HHSC corporate office which is authorized to enter into contracts for the procurement of goods or services. The term "HHSC" refers to HHSC and its region or facility entering into this Agreement.

2. REPRESENTATIONS AND WARRANTIES. CONTRACTOR (including any and all individual physicians or other health care practitioners providing services hereunder [referred to individually and collectively as "Provider(s)"]) represents and warrants to HHSC, upon execution and while this Agreement is in effect, as follows:

- a. CONTRACTOR is not bound by any agreement or arrangement that would preclude said CONTRACTOR from entering into or fully performing as required under this Agreement;
- b. No Provider is bound by any agreement or arrangement that would preclude said Provider from fully performing the services required under this Agreement;
- c. No Provider's license to practice medicine in the State of Hawaii ("STATE") or in any other jurisdiction has ever been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or restricted in any way;
- d. No Provider's medical staff privileges at any health care facility have ever been denied, suspended, revoked, terminated voluntarily relinquished under threat of disciplinary action, or made subject to terms of probation or any other restriction;
- e. No Provider has in the past conducted, or is presently conducting, his or her medical practice in such a manner as to cause such Provider to be suspended, excluded, barred or sanctioned under the Medicare or Medicaid Program, or any government licensing agency, nor has Provider ever been convicted of a criminal offense related to health care, or listed by a federal agency as debarred, excluded or otherwise ineligible for federal program participation;
- f. Each Provider has, and shall maintain throughout the term of this Agreement, an unrestricted license to practice medicine in the STATE and medical staff privileges at the HHSC facility or facilities;
- g. No Provider receives aggregate compensation from CONTRACTOR that varies with, or otherwise reflects, the volume or value of referrals or other business generated by Provider for the HHSC facility or facilities furnishing the designated health services as defined under 42 C.F.R. Section 411.351;
- h. The aggregate services CONTRACTOR provides pursuant to the terms of this Agreement do not exceed those that are reasonable and necessary for the legitimate and commercially reasonable business purpose of the services;
- i. The services provided pursuant to the terms of this Agreement do not involve the counseling or promotion of a business arrangement or other activity that violates any STATE or Federal law; and
- j. CONTRACTOR warrants that: neither CONTRACTOR, any person with an ownership interest in CONTRACTOR, any Provider providing services hereunder, nor any member of any such Provider's immediate family is employed by or has a financial relationship with HHSC or any of its subsidiaries or affiliates. If at any time during the term of this Agreement such a relationship becomes established, immediate notice shall be given by CONTRACTOR to HHSC as provided in this Agreement. HHSC will then review the situation and determine if such relationship complies with applicable law. If the relationship and this Agreement are found by HHSC to comply with applicable law, no further steps shall be taken. If the relationship and the Agreement are found to not comply with applicable law, then HHSC shall propose appropriate amendments to this Agreement or the other relationship (which may include termination) so as to ensure that this Agreement and the other relationship comply with all applicable laws.

For this purpose, "immediate family" means husband or wife, natural or adoptive parent, child or sibling; step-parent, step-child, step-brother or step-sister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of a grandparent or grandchild.

3. HHSC EMPLOYEES; PROVIDERS' OBLIGATIONS. Neither CONTRACTOR nor Provider shall solicit the services of, or employ or procure on behalf of another the employment of, any individual currently employed by HHSC, except with the express written consent of HHSC; nor shall CONTRACTOR or any Provider engage in any other activity which would be in conflict with his/her/its respective obligations hereunder.

4. CONTRACTOR EXCLUSION FROM FEDERAL PROGRAMS. CONTRACTOR affirmatively states that neither CONTRACTOR nor any of its employees, agents or subcontractors, including Providers, 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. HHSC reserves the right to verify that the above statement is true and to immediately cancel this Agreement in the event it is not true.

5. CONTRACTOR'S AND PROVIDERS' STATUS; STANDARDS.

a. CONTRACTOR and Providers shall act at all times under this Agreement as independent contractor(s) to HHSC. The parties agree that HHSC shall not have and shall not exercise any control or direction over the manner or method by which CONTRACTOR meets its obligations under this Agreement nor over the manner or method by which any Provider provides the Services. However, Contractor and Providers shall perform at all times in accordance with currently approved methods and standards of practice for the services in the medical community and as required by the HHSC, HHSC corporate, regional and facility rules, regulations, policies and bylaws, the recommendations of The Joint Commission as applicable, and relevant professional organizations. The provisions of this paragraph 5 shall survive expiration or other termination of this Agreement, regardless of the cause of such termination.

b. The CONTRACTOR and the CONTRACTOR's employees and agents, including Providers, are not by reason of this Agreement agents or employees of the HHSC or the STATE for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the HHSC or the STATE any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to HHSC or STATE employees.

c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR's performance under this Agreement. All services shall be performed in compliance with the applicable standards set forth by law or ordinance or established by the rules and regulations of any Federal, STATE or local legal authority, and applicable accreditation agencies, such as The Joint Commission. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability for all loss, damage, or injury to the CONTRACTOR's employees and agents, and to any individual not a party to this Agreement, caused by the CONTRACTOR or the CONTRACTOR's employees or agents in the course of their employment.

6. SUBCONTRACTS AND ASSIGNMENTS. Except as otherwise set forth in the Agreement, 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 assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Agreement shall be effective unless and until the assignment is approved by HHSC. This Agreement is assignable by HHSC without consent provided that HHSC provides prompt written notice of the assignment.

7. INDEMNIFICATION AND DEFENSE. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, the 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 all claims, suits, and demands therefor, arising out of or resulting from 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.

8. COST OF LITIGATION. In case the STATE, the HHSC, the contracting facility, and their directors, officers, employees, and agents shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Agreement, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, the HHSC, the contracting facility, and their directors, officers, employees, and agents, including attorney's fees.

9. 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.

10. REQUIRED DISCLOSURES. CONTRACTOR shall notify HHSC in writing within three (3) days after any of the following events occurs:

a. Any Provider's license to practice medicine in the STATE or any other jurisdiction lapses or is denied, suspended, revoked, terminated, relinquished or made subject to terms of probation or other restriction;

b. Any Provider's medical staff membership and/or privileges at any health care facility are denied, suspended, revoked, terminated, voluntarily relinquished (under threat of disciplinary action) or made subject to terms of probation or other restriction;

c. Any Provider is required to pay damages in any malpractice action by way of judgment or settlement;

d. Any Provider becomes the subject of a disciplinary proceeding or action before any governmental or professional licensing board, medical staff or peer review body;

e. Any Provider's DEA number is revoked, suspended, terminated, relinquished, placed on terms of probation, or restricted in any way;

f. Any event that substantially interrupts all or a portion of any Provider's professional practice or that materially adversely affects any Provider's ability to perform Provider's obligations hereunder; or

g. Any Provider is convicted of a criminal offense related to health care or any Provider is listed by a federal agency as being debarred, excluded or otherwise ineligible for federal program participation.

11. MANAGED CARE. CONTRACTOR shall participate in all third-party payment or managed care programs in which HHSC participates, render services to patients covered by such programs, and accept the payment of amounts provided for under those programs as payment in full for services of the Providers to program patients.

12. COMPENSATION.

a. Entire Compensation. CONTRACTOR shall have the sole responsibility to compensate any Providers providing services hereunder for performance of the services, including payment of health insurance and other fringe benefits, payroll taxes, Social Security contributions, and premiums for any government-mandated employment-related insurance. CONTRACTOR reserves the right, in its sole discretion, to determine the compensation payable to each Provider. CONTRACTOR hereby agrees to indemnify and hold HHSC harmless in connection with any claims for compensation by such Providers for services rendered hereunder. The indemnification obligations herein stated in this subparagraph shall survive the termination and/or expiration of this Agreement.

b. Fair Market Value of Compensation Paid to Contractor. The parties agree that the compensation paid by HHSC to CONTRACTOR: (a) does not exceed fair market value; and (b) is not determined in a manner that takes into account the volume or value of referrals or other business that might be generated among HHSC, CONTRACTOR and Provider(s), except as may be permitted by law. The parties further agree that the Agreement does not require the limitation or withholding of items or services from patients in violation of any federal, STATE, or local law.

c. Notwithstanding the above provisions, or any other provision of this Agreement (including any attachments and exhibits), this Agreement is subject to appropriation should the contract term extend beyond the end of the current fiscal year and any renewal or extension of this Agreement is also subject to appropriation.

13. TERM AND TERMINATION.

a. Term. In the event the parties continue to abide by the terms of this Agreement after the expiration of an initial or renewal term of at least one (1) year without having agreed in writing to renew this Agreement, the term of this Agreement shall continue on a month-to-month basis thereafter for up to six (6) months, subject to termination by either party at any time upon the provision of thirty (30) days' prior written notice to the other party.

b. Termination.

(1) **Termination Without Cause.** Either party may terminate this Agreement upon sixty (60) days prior written notice to the other party. If either party terminates this Agreement without cause prior to the expiration of the then-current term, Facility and Physician may not enter into an agreement for services similar to those provided by Physician hereunder, until the expiration of the then current term. Termination without cause does not constitute breach.

(2) **Termination for Breach.** Either party may terminate this Agreement upon breach by the other party of any material provision of this Agreement, provided such breach continues for fifteen (15) days after receipt by the breaching party of written notice of such breach from the non-breaching party.

(3) **Effect of Termination.** As of the effective date of termination of this Agreement, neither party shall have any further rights or obligations hereunder except: (i) as otherwise provided herein; (ii) for rights and obligations accruing prior to such effective date of termination; or (iii) arising as a result of any breach of this Agreement.

14. IMMEDIATE REPLACEMENT OF PROVIDER OR TERMINATION.

a. Upon the occurrence of any of the following events, HHSC may either: (a) immediately terminate this Agreement in the event CONTRACTOR providing services hereunder is a sole proprietor, solely-owned professional corporation, or other similar entity with only a single Provider providing services hereunder; or (b) require immediate removal and replacement of any Provider providing services hereunder ("Affected Provider") by written notice to CONTRACTOR:

(1) the denial, suspension, revocation, termination, restriction, lapse or voluntary relinquishment (under threat of disciplinary action) of any Affected Provider's medical staff membership and/or privileges at HHSC or of any Affected Provider's license to practice medicine in the STATE;

(2) the denial, suspension, revocation, termination, relinquishment (under threat of disciplinary action) or restriction of any Affected Provider's medical staff membership and/or privileges at any health care facility other than HHSC, or of any Affected Provider's license to practice medicine in any jurisdiction other than the STATE;

(3) the death of any Affected Provider, or the disability of any Affected Provider which prevents such Affected Provider from performing the services in compliance with applicable standards as described above, as determined in the discretion of HHSC Administrator in consultation with an officer of HHSC's medical staff;

(4) the termination, revocation, restriction, or relinquishment of any Affected Provider's DEA number;

(5) the failure of CONTRACTOR to make a timely disclosure concerning the Affected Provider required pursuant to paragraph 10, "Required Disclosures", hereof;

(6) conduct by an Affected Provider which, in the discretion of HHSC in consultation with an officer of the medical staff of HHSC, could adversely affect the quality of professional care provided to HHSC's patients or the performance of duties required hereunder, or be prejudicial or adverse to the best interest and welfare of patients;

(7) breach by any Affected Provider of any of the confidentiality provisions hereof;

(8) any Affected Provider's conviction of a criminal offense related to health care, or any Affected Provider's listing by a federal agency as being debarred, excluded or otherwise ineligible for federal program participation; or

(9) Provider's commission of any act, illegal or otherwise (including, but not limited to, fraud or misrepresentation), detrimental to the business or reputation of HHSC or any of its facilities.

b. If HHSC furnishes CONTRACTOR with written disapproval of an Affected Provider (the "Disapproval Notice"), CONTRACTOR shall immediately direct the Affected Provider to cease the performance of services at HHSC and shall arrange for a qualified interim replacement ("Interim Replacement") for the Affected Provider, which replacement shall be reasonably acceptable to HHSC. HHSC shall act reasonably in disapproving an Affected Provider, but shall not be required to have legal "cause" or to conduct a formal or informal hearing as a requirement for disapproval or issuance of the Disapproval Notice. HHSC and CONTRACTOR shall meet and confer within seven (7) days following provision of the Disapproval Notice to discuss the reason(s) for issuance of the Disapproval Notice, the necessity for CONTRACTOR to furnish a permanent replacement provider ("Permanent Replacement") for the Affected Provider, and the identity or desired qualifications for a Permanent Replacement. Within ninety (90) days after provision of the Disapproval Notice by HHSC, CONTRACTOR shall appoint a qualified Permanent Replacement for the Affected Provider acceptable to HHSC. CONTRACTOR's failure to do so within such ninety (90) day period shall constitute grounds for termination of this Agreement by HHSC immediately upon the provision of written notice by HHSC to CONTRACTOR.

15. CONFIDENTIALITY.

a. HHSC Information. CONTRACTOR recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to HHSC hereunder, CONTRACTOR and Providers may have access to certain information of HHSC that is confidential and constitutes valuable, special and unique property of HHSC. CONTRACTOR agrees that neither CONTRACTOR nor any Provider will at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without HHSC's express prior written consent, except pursuant to Provider's duties hereunder, any confidential or proprietary information of HHSC, including, but not limited to, information which concerns HHSC's patients, costs, or treatment methods developed by HHSC and which is not otherwise available to the public.

b. Terms of this Agreement. Except for disclosure to CONTRACTOR's or any Provider's legal counsel, accountant or financial advisors (none of whom shall be associated or affiliated in any way with HHSC or any of its affiliates) neither CONTRACTOR nor any Provider shall disclose the terms of this Agreement to any person who is not a party or signatory to this Agreement unless disclosure thereof is required by law or otherwise authorized by this Agreement or consented to by HHSC. Unauthorized disclosure of the terms of this Agreement shall be a material breach of this Agreement and shall provide HHSC with the option of pursuing remedies for breach or immediate termination of this Agreement in accordance with Paragraph 13.b.(2), "Termination for Breach", hereof.

c. Patient Information. Neither CONTRACTOR nor any Provider, nor HHSC, shall disclose to any third party, except where permitted or required by law, any patient or medical record information regarding HHSC's patients; and

CONTRACTOR, Providers, and HHSC shall comply with all federal and STATE laws and regulations, and all bylaws, rules, regulations, and policies of HHSC and HHSC's medical staff regarding the confidentiality of such information. CONTRACTOR and HHSC acknowledge that in receiving or otherwise dealing with any records or information about HHSC's patients receiving treatment for alcohol or drug abuse, CONTRACTOR, Providers and HHSC are fully bound by the provisions of the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records (42 C.F.R. Part 2, as amended from time to time).

d. Application of Uniform Information Practices Act. All information, data, or other material provided by the CONTRACTOR to the HHSC shall be subject to the Uniform Information Practices Act, chapter 92F, HRS, as modified by chapter 323F, HRS ("UIPA"). CONTRACTOR further acknowledges and agrees that the compensation terms of this Agreement are government records subject to disclosure under the UIPA.

e. Survival. The provisions of this paragraph shall survive expiration or other termination of this Agreement, regardless of the cause of such termination.

16. INSURANCE.

a. During the term of this Agreement, CONTRACTOR shall maintain at all times or cause to be maintained comprehensive general liability and professional liability insurance (the "POLICY") covering the acts and omissions of Providers rendering the services at HHSC. The POLICY shall be maintained with a company or companies approved by HHSC, with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and per Provider and Three Million Dollars (\$3,000,000.00) in the aggregate, per Provider, or such greater amount as may be required from time to time by HHSC's Corporate Bylaws or Medical Staff Bylaws, whichever is the greater amount. Said POLICY shall provide that HHSC shall receive not less than thirty (30) days' notice prior to any cancellation or material change or reduction of coverage. Prior to the commencement of this Agreement, CONTRACTOR shall provide HHSC with a certificate of insurance naming HHSC as the certificate holder. Thereafter, prior to the expiration of each policy period, CONTRACTOR's insurance carrier shall provide HHSC with certificates of insurance evidencing the foregoing coverage and provisions. HHSC reserves the right to request and receive a certified copy of the POLICY. CONTRACTOR shall also carry workers' compensation insurance for CONTRACTOR's employees in the statutory amounts. Failure to maintain or cause to be maintained insurance in accordance with the provisions set forth herein shall be a material breach of this Agreement and shall provide HHSC with the option of pursuing remedies for breach and/or immediate termination of this Agreement.

b. The coverage required by this provision shall be either: (a) on an occurrence basis; or (b) on a claims made basis. If the coverage is on a claims made basis, CONTRACTOR hereby agrees that not less than thirty (30) days' prior to the effective date of termination by CONTRACTOR of any Provider's insurance coverage by the current carrier, CONTRACTOR shall: (a) purchase tail or extended reporting coverage insurance for a minimum period of five (5) years in the above-stated amounts for all claims arising out of incidents occurring prior to such termination of coverage; and (b) provide HHSC with a certificate of such coverage. If CONTRACTOR fails to purchase such coverage and provide HHSC with a certificate of same in accordance with the above-stated requirements, HHSC shall have the right, as hereby acknowledged by CONTRACTOR, to purchase such coverage and notify CONTRACTOR in writing of the total premium costs therefor. CONTRACTOR hereby expressly acknowledges and agrees that the total premium cost for such coverage purchased by HHSC under this provision shall be immediately due and payable by CONTRACTOR to HHSC upon CONTRACTOR's receipt of said notice, and may be offset against any money owed by HHSC to CONTRACTOR.

17. CONTRACTOR'S TAX RESPONSIBILITIES.

a. 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. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.

b. 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.

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 in reasonable detail the services performed and the amount due, and certifying that services requested under the Agreement have been performed by the CONTRACTOR according to the Agreement.

b. Prompt Payment.

(1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) 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; and

(2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money, provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

19. COST AND EXPENSE REIMBURSEMENT. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Agreement shall be subject to the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class airfare, whichever is less.
- b. Reimbursement for ground transportation 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 allowable (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 located on the island where the work will be performed do not qualify for travel or subsistence reimbursement.

20. 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, and contractors 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.

21. BUSINESS ASSOCIATE ADDENDUM. 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 CONTRACTOR has read the Business Associate Addendum, which is posted on the HHSC internet site (www.hhsc.org/BAA) and is applicable to all Business Associates. 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.

22. FINANCIAL OBLIGATION. No CONTRACTOR or Provider shall incur any financial obligation on behalf of HHSC without the prior written approval of HHSC.

23. REFERRALS. The parties acknowledge that none of the benefits granted CONTRACTOR hereunder are conditioned on any requirement that the CONTRACTOR or Provider make referrals to, be in a position to make or influence referrals to, or otherwise generate business for HHSC. The parties further acknowledge that Providers are not restricted from establishing staff privileges at, referring any patient to, or otherwise generating any business for, any other hospital or facility of their choosing.

24. CAMPAIGN CONTRIBUTIONS. CONTRACTOR acknowledges that it is unlawful under HRS Section 11-355 (unless specifically permitted under that law) for CONTRACTOR at any time between the execution of this Agreement through the completion of this 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 contribution from any person for any purpose during any period.

25. **MEDICARE ADVANTAGE PROGRAM ADDENDUM.** The HHSC Medicare Advantage Program Addendum, as amended from time to time and available on-line at the HHSC internet site, www.hhsc.org/MAPA is incorporated herein as if set out fully in this Agreement

26. **GOVERNING LAW.** This Agreement shall be construed, interpreted, and governed by the laws of the State of Hawaii. The provisions of this paragraph shall survive expiration or other termination of this Agreement, regardless of the cause of such termination.

27. **CHANGES IN LAW.**

a. **Legal Event; Consequences.** Notwithstanding any other provision of this Agreement, if the governmental agencies that administer the Medicare, Medicaid, or other federal programs (or their representatives or agents) or any other federal, state or local governmental or nongovernmental agency, or any court, administrative tribunal passes, issues, or promulgates any law, rule, regulation, standard, interpretation, order, decision or judgment, including but not limited to those relating to any regulations pursuant to state or federal anti-kickback or self-referral statutes (collectively or individually, "Legal Event"), which, in the good faith judgment of one party (the "Noticing Party"), materially and adversely affects either party's licensure, accreditation, certification, or ability to refer, to accept any referral, to bill, to claim, to present a bill or claim, or to receive payment or reimbursement from any federal, state or local governmental or nongovernmental payor, or which subjects the Noticing Party to a risk of prosecution or civil monetary penalty, or which, in the good faith judgment of the Noticing Party, indicates a rule or regulation with which the Noticing Party desires further compliance, then the Noticing party may give the other party notice of intent to amend or terminate this Agreement in accordance with the next subparagraph.

b. **Notice Requirements.** The Noticing Party shall give notice to the other party together with an opinion of counsel setting forth the following information:

- (1) The Legal Event(s) giving rise to the notice;
- (2) The consequences of the Legal Event(s) as to the Noticing party;
- (3) The Noticing Party's intention to either:
 - (i) Terminate this Agreement due to unacceptable risk of prosecution or civil monetary penalty;

or

the following:

- (a) to further comply with any anti-kickback or Stark II statutory provisions or rules or regulations created or affected by the Legal Event(s); or
 - (b) to satisfy any licensure, accreditation, or certification requirements created or affected by the Legal Event(s); and/or
 - (c) to eliminate or minimize the risk of prosecution or civil monetary penalty;
- (4) The Noticing Party's proposed amendment(s); and
 - (5) The Noticing Party's request for commencement of the Renegotiation Period (as defined below).

c. **Renegotiation Period; Termination.** In the event of notice under either subparagraph b.(3)(i) or b.(3)(ii) above, the parties shall have ten (10) days from the giving of such notice ("Renegotiation Period") within which to attempt to amend this Agreement in accordance with the Noticing Party's proposal (if any) or otherwise as the parties may agree. If this Agreement is not so amended within the Renegotiation Period, this Agreement shall terminate as of midnight on the 10th day after said notice was given. Except as otherwise required by applicable law, any amounts owing to either party hereunder shall be paid, on a pro rata basis, up to the date of such termination, and any obligation hereunder that is to continue beyond expiration or termination shall so continue pursuant to its terms. All opinions of counsel presented by the Noticing Party hereunder, and any corresponding opinions given by the other party in response, shall be deemed confidential and given solely for purposes of renegotiation and settlement of a potential dispute, and shall not be deemed disclosed so as to waive any privileges otherwise applicable to said opinions.

28. **ACCESS TO BOOKS AND RECORDS.** If the value or cost of services rendered to HHSC pursuant to this Agreement is Ten Thousand Dollars (\$10,000.00) or 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 the sub-paragraph immediately above. The availability of CONTRACTOR's books, documents and records shall be subject at all times to all applicable legal requirements, including without limitation, such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation. The provisions of this paragraph shall survive the expiration or other termination of this Agreement, regardless of the cause of such termination.

29. **DRAFTING.** No provision of this Agreement shall be interpreted for or against any party on the basis that such party was the draftsman of such provision, and no presumption of burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

30. **WAIVER.** A waiver by either party of a breach or failure to perform hereunder shall not constitute a waiver of any subsequent breach or failure.

31. **CAPTIONS.** The captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Agreement.

32. **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.

33. **CROSS-REFERENCE TO MASTER LIST OF PHYSICIAN CONTRACTS.** The parties acknowledge that any and all agreements as between the parties to this Agreement, including this Agreement, shall be included in the master list of all contracts between HHSC and all physicians providing services at HHSC facilities, maintained and updated regionally and available for review upon request by any governmental authority to the extent such review is required by law.

34. **OPEN PRACTITIONER-PATIENT COMMUNICATIONS (ANTI-GAG PROVISION); REFERRALS NOT REQUIRED.** HHSC and CONTRACTOR agree that any Provider providing services hereunder may discuss with patients, or their authorized representative(s), all treatment options that Provider deems appropriate based on relevant professional standards, regardless of benefit coverage limitations and within the prevailing practices and standards of the profession and community, subject, however, to all applicable laws and regulations pertaining to confidentiality ("Open Communication"). HHSC shall not assess Provider(s) any penalties, financial or otherwise, as a result of such Open Communication. It is expressly understood and agreed that HHSC has contracted for services set forth herein solely to ensure the availability of medically appropriate services for HHSC's patients; nothing herein is intended, nor shall it be construed, to require or encourage any Provider providing services hereunder to refer any patient, procedure or ancillary service to any HHSC facility.

35. **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 only upon mutual agreement and by written amendment to this Agreement signed by both CONTRACTOR and HHSC.

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; and any such oral modification, alteration, amendment, change or extension shall be null and void.

c. Notwithstanding any other provisions in this contract to the contrary, any modification, alteration, amendment, change or extension of any term, provision or condition shall be null and void if such modification, alteration, amendment, change or extension is reasonably determined by either party to result in the violation of any federal or state statutes or regulations, including, but not limited to, Section 1877 of the Social Security Act, by either or both of the parties.

36. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the parties relating to such subject matter.

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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 two (2) years with two (2) one-year extensions available, not to exceed a total contracting period of four (4) 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.

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	\$3,000,000
•	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. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$ 500,000
Disease – Each Employee	\$ 500,000
Disease – Policy Limit	\$1,000,000

7.1.3.1 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.

7.1.3.2 This requirement shall not apply to: Separately, each contractor or subcontractor who qualify as a sole proprietor.

7.1.4 Professional Liability (Errors and Omissions Liability)

Each Claim	\$1,000,000
Annual Aggregate	\$3,000,000

7.1.4.1.1 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.

7.1.4.2 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.

7.1.4.3 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.

END OF RFP # 22-0349