

REQUEST FOR PROPOSALS

RFP No: HHSC 19-019

COMPETITIVE SEALED PROPOSALS
TO PROVIDE:

Charge Description Master (CDM) Tool

for

Hawaii Health Systems Corporation

Hawaii Health Systems Corporation
3675 Kilauea Avenue
Honolulu, Hawaii 96816
An Agency of the State of Hawaii

TABLE OF CONTENTS

	<u>Page No.</u>
SECTION 1: <u>ADMINISTRATION</u>	3
SECTION 2: <u>SCOPE OF SERVICES</u>	8
SECTION 3: <u>PROPOSALS</u>	12
SECTION 4: <u>EVALUATIONS</u>	17
SECTION 5: <u>AWARD OF CONTRACT</u>	20
APPENDIX A: <u>TRANSMITTAL COVER LETTER</u>	
APPENDIX B: <u>PROPOSAL SUBMISSION CHECKLIST</u>	
APPENDIX C: HAWAII HEALTH SYSTEMS CORPORATION AGREEMENT FOR GOODS OR SERVICES BASED UPON COMPETITIVE SEALED PROPOSALS	
ATTACHMENT 4: HHSC GENERAL CONDITIONS - GOODS & NON-HEALTHCARE SERVICES	
EXHIBIT A: Technical Review Worksheet	

SECTION 1

ADMINISTRATION

1.0 INTRODUCTION

This Request for Proposal (“RFP”) is issued by the Hawaii Health Systems Corporation (“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 Hawaii Revised Statutes (“HRS”) Chapter 103D and its implementing rules. All procedures and processes will be in accordance with HRS Chapters 103D and 323F. To the extent this solicitation contains any terms or provisions inconsistent with HRS Chapter 103D and its and implementing rules, the statutes and the rules shall govern.

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 evaluation criteria established in this RFP. Hereinafter, organizations interested in submitting a proposal in response to this RFP shall be referred to as “OFFEROR”.

To allow 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 Public Announcement	April 29, 2019
2.	Closing Date for Receipt of Questions	May 6, 2019
3.	Addendum for HHSC Response to Offeror’s Questions	May 13, 2019
4.	Closing Date for Receipt of Proposals	May 30, 2019- No Later Than 3:00 p.m., HST
5.	Mandatory Requirements Evaluation	May 30 - June 4, 2019
6.	Proposal Evaluations	June 5-13, 2019
7.	Proposal Discussions (optional)	To be determined
8.	Demonstrations (Tentative)	June 18 -21, 2019
9.	Best and Final Offers (optional)	To be determined
10.	Contractor Selection/Award Notification (on/about)	June 25, 2019
11.	Contract Execution Period	June 25 - July 19, 2019
12.	Contract Tentative Award Date (on/about)	July 24, 2019

1.2 AUTHORITY

This RFP is issued under the provisions of the HRS, Chapter 103D and its administrative rules. 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:

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

Nancy Delima, Contracts Manager
HHSC
3675 Kilauea Avenue, Honolulu, HI 96816
PH: (808) 243-3091
ndelima@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. In addition to the twelve HHSC facilities, Kahuku Medical Center, Hawaii Health Systems Foundation, and Alii Community Care are wholly owned subsidiaries and may be included in this solicitation.

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 2015, HHSC had a total of 4,201 full time employees, operating 1,253 licensed beds, approximately 800 of which are designated long term care, located on five different islands, with approximately 21,676 acute care admissions and 119,225 emergency room visits.

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, or post mail to the Issuing Officer no later than the "Closing Date for Receipt of Questions", identified in Section 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 for initial questions and final questions stipulated in Section 1.1.

Impromptu, un-written questions are permitted and verbal answers will be provided during pre-proposal conferences and other occasions. Such responses are **only** intended as general direction and do not and shall 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:

Nancy Delima, Contracts Manager
Email: ndelima@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, Nancy Delima, 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.

DEBRIEFING

1.11 PROTESTS

Pursuant to HRS §103D-701, 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 HRS 103D and its implementing rules. The notice of award, if any, resulting from this solicitation shall be posted in the Hawaii State Procurement Reporting System website:

<http://www.hawaii.gov/spo2/source/>

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

Edward N. Chu
Chief Financial Officer
Hawaii Health Systems Corporation
3675 Kilauea Avenue
Honolulu, Hawaii 96816

SECTION 2

SCOPE OF SERVICES

2.0 INTRODUCTION

The purpose of this competitive solicitation is to award a single, fixed-priced Agreement for OFFEROR to provide HHSC a **“Charge Description Master (CDM) Tool.”**

The OFFEROR awarded an Agreement under this RFP shall be referred to as “CONTRACTOR” or “OFFEROR”.

2.1 CONTRACT PERIOD

The term of contract shall be for two (2) years, commencing on/about September 1, 2019, with three (1) one-year option periods.

2.2 SCOPE OF SERVICES

The CONTRACTOR shall provide a **web-based “CDM Tool”**, to assist HHSC personnel in maintaining a comprehensive and compliant CDM file. The CONTRACTOR shall be pursuant to provisions of the Scope of Services, as described below; and pursuant to the HHSC General and Special Conditions (APPENDIX D) of the RFP.

2.2.1 The following HHSC facilities will need access to the CDM tool:

- **West Hawaii Region:** Kona Community Hospital, Kohala Hospital;
- **Oahu Region:** Leahi Hospital, Maluhia, Kahuku Medical Center;
- **Kauai Region:** Kauai Veterans Memorial Hospital, Samuel Mahelona Memorial Hospital, and the West Kauai Clinics including Port Allen, Waimea and Kalaheo;

2.2.2 This tool shall include the following capabilities and functionalities:

- CDM Maintenance (15-20 users):
 - Process CDM requests with the capability to upload multiple requests
 - An integrated workflow to track clinical departments’ requests, the approval process and the implementation of CDM additions/changes. This workflow should also include the notification to all clinical systems affected by these changes.
 - Manage multiple CDM files from two different systems (Cerner Community Works and Cerner Soarian Financials).
 - Analyze and identify billing code variances and also provide quarterly/annual updates to CPT/HCPCS codes
 - Provide email alerts to regulatory and compliance changes impacting CDMs
- Reference Material (estimated 30-60 users system-wide)
 - Online access to coding and compliance materials to include federal and state regulatory guidelines and other reference publications
- Consulting (15-20 users):
 - Provide web-based consulting services to assist in resolving billing and coding issues
 - Provide assistance in establishing new service lines, developing charge sheets and other CDM related services
- Reporting (15-20 users):
 - Provide necessary reports to HHSC personnel to manage and maintain their CDMs
 - Provide audit trails to track when and who submits and implements CDM additions, deletions, and changes
 - Incorporate revenue and usage data

2.2.3 On-site Review Option. The CONTRACTOR may be requested to provide up to 10 days of on-site CDM reviews with the clinical department managers upon request. This is an optional task and will be priced separately in this solicitation.

2.2.4 Price Analysis Option. The CONTRACTOR may be requested to provide comparative and strategic pricing analysis for defensive pricing and to improve net revenue. This is an optional task and will be priced separately in this solicitation.

2.3 HHSC RESPONSIBILITIES:

- Provide access to all documents and data required for the performance of services, pursuant to the Clause 20, "Confidentiality of Material" set forth in the General Conditions of the Agreement.
- Provide Technical Representatives, as described below in Section 2.4

2.4 INFORMATION TECHNOLOGY (IT) SYSTEMS.

- A. The CONTRACTOR shall complete the Information Technology Department's Technology Review Worksheet attached herein as EXHIBIT A.
- B. Must be:
 - 1. Able to support Windows 7 and Windows 10;
 - 2. Compatible with Internet Explorer, and
 - 3. Compatible with virtual desktop environment (VMware).
- C. HHSC shall receive all software updates no later than other OFFEROR clients. This includes 90 day advance notice of the upcoming updates and detailed explanation of the changes. OFFEROR will make every effort not to shut down the test or production site during HHSC regular business hours between 7:00am and 6:00PM HST.
- D. OFFEROR shall provide technical service and helpdesk services for authorized HHSC staff, no less than 8:00 am to 4:00 pm HST, Monday through Fridays, excluding national holidays. This shall include the availability of remote diagnostic service. Incident response times shall be agreed upon and based upon the criticality/priority of the issue during normal Hawaii Standard Time (HST) business hours from 7:00am to 6:00pm HST.
- E. For cloud hosted solutions, the uptime guarantee should be 99% or greater to ensure no down time.
- F. All information and documents inputted into the System shall be the property of HHSC and OFFEROR shall provide HHSC access data mapping definitions, relations and descriptions to download or otherwise transfer HHSC to other systems upon request. OFFEROR shall perform monthly backup of the system and shall provide HHSC copies upon request. All backups shall be in a universal format accessible by multiple software programs. In the event HHSC chooses another System in the future, the OFFEROR shall provide all data and documents in a universally usable electronic format to HHSC at no additional cost. The system proposed by the OFFEROR will be a browser-based application and not require administrator privileges on the client to operate. The OFFEROR will identify client hardware, OS, network requirements (i.e. ports, bandwidth, etc.), browser or client requirements (i.e. plugins, JVM, Java, etc.) and any additional specifications for the system to function properly. The OFFEROR will identify how remote support is accomplished and the requirements needed for installation.
- H. The OFFEROR shall submit a detailed phased Project Timeline from the date of contract execution through project acceptance. The Project Timeline shall be based on the OFFEROR's experience in implementing similar sized systems for government clients.
- I. HHSC is requesting either a cloud based or locally hosted solution or for its System. OFFEROR should propose both solutions. Include in your response a listing of major and minor releases for both the past two years and upcoming two years. In your response include an explanation of what release updates were included in non-technical language.

- J. The OFFEROR shall submit a detailed Disaster Recovery plan for each proposed solution.
- K. HHSC requires the OFFEROR to have a high quality security protocol in place to avoid the system being compromised or “hacked”. Describe the OFFEROR’S standards around cloud application security, including any cloud security certifications. The solution must meet all HIPPA security requirements.
- L. To ensure compliance with all privacy laws, the cloud hosting site shall be physically located in the United States of America.

2.5 HHSC SHALL PROVIDE.

- A. Access to all documents and data required for the performance of services, pursuant to the Paragraph 20, “Confidentiality of Material” as set forth in the HHSC General Conditions.

2.6 OFFEROR REQUIREMENTS

A. OFFEROR shall provide services to the Corporate Office and/or to one or more of the four (4) HHSC regions consisting of the following hospitals (hereinafter, HHSC), if and when requested. Throughout the life of this Agreement, should Hawaii Health Systems Corporation (HHSC) have the need to eliminate or add a facility to its system-wide inventory, OFFEROR agrees to provide services to HHSC facilities at the discretion of HHSC.

West Hawaii Region: Kona Community Hospital, Kohala Hospital;

Oahu Region: Leahi Hospital, Maluhia, Kahuku Medical Center;

Kauai Region: Kauai Veterans Memorial Hospital, Samuel Mahelona Memorial Hospital, and the West Kauai Clinics including Port Allen, Waimea and Kalaheo;

HHSC Corporate Office.

B. Upon contract award OFFEROR shall provide to the HHSC Technical Requesters written contact information for the OFFEROR’s Representatives who shall be responsible for receiving, coordinating and finalizing HHSC’s Service Orders and all matters relating to the satisfactory performance of the services. Written contact information shall include Representative’s name, telephone, fax number and e-mail address.

C. OFFEROR shall not use State of Hawaii employees to perform services under this Agreement, nor recruit from the staff of HHSC to become employees of the OFFEROR.

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 Section 3.7 below.

The price category information identified in Section 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) electronic proposal (**which includes a technical proposal, price proposal, Exhibit A, and Appendix A**). Alternate proposals will not be accepted. The Issuing Officer must receive **one (1) original electronic copy emailed to ndelima@hhsc.org** of the proposal no later than the "Closing Date for Receipt of Proposals", identified in Section 1.1. **(May 30, 2019- No Later Than 3:00 p.m., HST) Proposals received after this time/date may be rejected.** The original shall be clearly marked "ORIGINAL" and copies shall be clearly marked "COPY". It shall be the sole responsibility of the OFFEROR to confirm receipt of the electronic copy. Deliver proposals to the following address:

Nancy Delima, Contracts Manager
RFP No. HHSC 19-019
ndelima@hhsc.org

The email header should be noticeably marked, as follows:

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 5, 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:

- SUMMARY
- BACKGROUND, QUALIFICATIONS AND EXPERIENCE
- PERSONNEL ORGANIZATION AND STAFFING
- 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 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.

3.7.3 PERSONNEL ORGANIZATION AND STAFFING

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

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

3.7.4 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
- B. SUMMARY OFFER

3.8.1 SUMMARY

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

3.8.2 SUMMARY OFFER

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

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

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

3.8.3 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/can not be provided, list the requirement(s) and provide detailed explanation of the reasons why the requirement(s) is not applicable. HHSC reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in this Section.

3.8.4 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 will be disqualified without further notice. Please refer to Section 1.7.

3.8.5 PROPOSAL SUBMISSION CHECKLIST

The Proposal Submission Checklist be used by the OFFEROR to ensure that all required documents and information are being submitted with OFFEROR'S proposal; and, as a supplementary means for HHSC in performing evaluation of the "Mandatory Requirements", as set forth in Section 4.2.1. 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 located under APPENDIX B, following Section 5 of the RFP.

SECTION 4 EVALUATIONS

4.0 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.

4.1 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.

4.2 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.....Proposal Discussions by Priority-List (**optional**)

Phase 5.....Best and Final Offers by Priority List (**optional**)

Phase 6.....Recommendation for Contract Award

4.2.1 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 will be grounds for deeming the proposal non-responsible, non-responsive or both and disqualification ("No Pass") thereof.

Proposal **MANDATORY REQUIREMENTS:**

✓ Proposal Cover Letter **with corporate seal or notarization**

- ✓ Technical Proposal
 - Background, Qualifications and Experience
 - Personnel Organization and Staffing
 - Management and Control
 - Miscellaneous
- ✓ Price Proposal
- ✓ State of Hawaii Compliance Documents
- ✓ Proposal Submission Checklist

4.2.2 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 Section 4.3 and the evaluation scoring system identified in Section 4.5.

4.2.3 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 Section 4.3 and the evaluation scoring system identified in Section 4.4.

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

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

4.2.5 PHASE - 5 BEST AND FINAL OFFERS (OPTIONAL)

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

4.2.6 PHASE - 6 RECOMMENDATION FOR CONTRACT AWARD

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

4.3 EVALUATION CATEGORIES AND VALUE WEIGHT PERCENTAGES

MANDATORY REQUIREMENTS **PASS/NO PASS**

PROPOSAL CATEGORIES [A]	RANKING * Select [1 Thru 10] 1-3 Low- Minimum Information Provided; 4-7 Med -Partial Information Provided; 8-10 High - Adequately meets all requirements. [B]	TOTAL POINT [C]
----------------------------------	--	--------------------------

20	Background, Qualification & Experience	1 2 3 4 5 6 7 8 9 10	RANKING [D] x 20 = Total Points
10	Personnel Organization & Staffing	1 2 3 4 5 6 7 8 9 10	RANKING [D] x 10 = Total Points
10	Management & Control	1 2 3 4 5 6 7 8 9 10	RANKING [D] x 10 = Total Points
30	Service Delivery	1 2 3 4 5 6 7 8 9 10	RANKING [D] x 30 = Total Points
30	Cost	1 2 3 4 5 6 7 8 9 10	RANKING [D] x 30 = Total Points

4 EVALUATION SCORING SYSTEM

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

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

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

SECTION 5 AWARD OF CONTRACT

5.0 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.

5.1 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.

5.2 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.

5.3 METHOD OF AWARD

The contract will be awarded by executing an **"Agreement for Goods or Services Based Upon Competitive Sealed Proposals"** ("CONTRACT") by HHSC and the successful OFFEROR ("OFFEROR"). 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. A "sample" CONTRACT is located at APPENDIX C. Please DO NOT complete or execute the "sample" CONTRACT.

5.4. GENERAL AND SPECIAL CONDITIONS:

The GENERAL CONDITIONS - NON-PHYSICIAN HEALTHCARE SERVICES, Section 5, APPENDIX D and the SPECIAL CONDITIONS, Section 5, APPENDICES E and F, are applicable and shall be part and whole and attached to the Agreement.

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

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

5.4.1 GENERAL EXCISE/USE TAX

Refer to the GENERAL CONDITIONS - NON-PHYSICIAN HEALTHCARE SERVICES, APPENDIX D. Work to be performed under this solicitation is a business activity taxable under Chapter 237, 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 Section for procedures in obtaining DOTAX forms and information.

5.4.2 HAWAII COMPLIANCE EXPRESS – CERTIFICATE OF COMPLIANCE

Pursuant to §103D-310(c), HRS, with section 3-122-112, HAR, the CONTRACTOR is required to obtain/posses valid **Certificates of Compliance** from the following agencies:

- 1) State of Hawaii Department of Commerce and Consumer Affairs,
- 2) Department of Labor and Industrial Relations, and
- 3) Department of Tax prior to executing a contractual agreement with a HHSC.

The certificates are valid for six months from the date of issue and must be valid on the date it is received by HHSC.

These certificates will be required upon contract execution. CONTRACTOR shall apply and obtain proof of compliance electronically through the Hawaii State Procurement Office “Hawaii Compliance Express” (“HCE”) website at <http://vendors.ehawaii.gov> for all three (3) state certificates referenced herein.

OFFERORS shall use the Hawaii Compliance Express services and will be required to pay an annual registration fee of \$15.00 or most current fee charged.

5.4.3 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.

5.4.4 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.

EXHIBIT A

**Hawaii Health Systems Corporation
Information Technology Department**

Technical Review Worksheet

System Name				
Date				
Vendor Contact Info:	Vendor			
	Tech Contact Name	Phone	FAX	E-mail
	Sales Contact Name	Phone		
HHSC Contact Info:	Department			
	Contact Name	Phone	FAX	E-mail
	ITD Project Coord. Name	Phone		

Introduction

The Technical Review Worksheet is a tool to help determine if a proposed product is compatible with the HHSC technology guidelines and preferences. The guidelines are used to identify those portions of a product that do not meet the HHSC standards so that if the system is selected, special arrangements can be made for support and/or the variance is documented.

System/Application Requirements Overview	
Describe the overall business purpose of the system: <ul style="list-style-type: none"> The processes the system is intended to automate. The deficiencies in current processes to be addressed. The overall goals and drivers of the system deployment. 	
What are the high level requirements for the system? (attach documents as necessary) <ul style="list-style-type: none"> Business requirements Functional Requirements Compliance Requirements 	

Provide an architectural diagram or brief description of the main components of the system.	
Where will the system be deployed? (e.g. department, geographical location, etc.)	
Who are the primary users? (e.g. nurses, billing clerks, etc.)	
What is the service window for the application? (e.g. business hours on weekdays only, 7x24, etc.)	
How long of an outage can be tolerated?	
Are there adequate manual processes to deal with an outage lasting more than 4 hours?	

General Product Information	
Current production version and release date?	
Date of anticipated release of next version?	
Total number of client sites?	
Total number of client sites on the current version?	
Total number of users (or seats), all versions?	
Is there a user group? If so, date and location of next meeting?	
CCHIT certification?	

Server Environment	
Preferred hardware platform for servers?	

Sizing strategy (RAM, number of disks, number of CPUs, etc)? (attach worksheet or modeling document if available)	
Overall fault tolerance strategy? (Clustering, RAID arrays, shadow databases, etc.)	
High-availability strategy for application servers? (fail over to hot standby server, clustered servers, load-sharing with a separate appliance, etc.)	
High-availability strategy for database servers? (fail over to hot standby server, clustered servers, load-sharing with a separate appliance, etc.)	
Backup procedures? (on-line or hot backup vs. cold backup, etc.)	
Compatible with EMC Avamar for backups?	
If not compatible with EMC Avamar, what backup tool is used/recommended? Are hot backups available or is application downtime required for backups?	
Describe the application software update procedure for minor patches/fixes.	
Describe the application software update procedure for major upgrades.	
Is a separate web server required? If so, what are the platform requirements? (hardware, operating system, web server software, etc.)	

Is a separate communications or gateway server required? If so, what are the platform requirements? (hardware, operating system, etc.)	
Does any process on any server require a logged-in user for proper operation?	
Does any process on any server require a third-party software product for full functionality?	
What provisions are there for a test system or test environment where updates can be tested?	
What provisions are there for a training environment?	
Specify which network ports are needed by the application software	
Can the application be hosted on a virtual (VM Ware) server?	

High Availability	
High-Availability strategy for application servers? (e.g. fail over to hot standby server, clustered servers, load-sharing with a separate appliance, etc.)	
High-Availability strategy for database servers? (e.g. fail over to hot standby server, clustered servers, load-sharing with a separate appliance, etc.)	

Client Hardware and Native Client Software Environment

Preferred hardware platform for client workstations? (brand, model, etc.)	
Preferred software/operating system platform for client workstations?	
Compatible with Windows XP Professional?	
Compatible with Windows 7 Professional 32-bit?	
Compatible with Windows 7 Professional 64-bit?	
Compatible with Windows 8 Professional 32-bit?	
Compatible with Windows 8 Professional 64-bit?	
Compatible with Windows 10 Professional	
Compatible with Apple Macintosh OS X.4 or later?	
Compatible with LINUX Red Hat version 7.2 or later?	
Special display or sound requirements?	
CD/DVD writer capabilities required?	
USB port required?	
Disk footprint of native client software, if any? (specify in MB)	
Printing requirements and capabilities? Compatible with all Windows print queues?	

Can the application software coexist with other applications on the same workstation?	
Client application implementation tool or language?	
Required 3 rd -party application software, if any?	
Required 3 rd -party drivers or components, if any	
Describe the client update procedure.	
Can the native client and any other necessary software be deployed and updated using Microsoft SCCM? Alternatively, can the client software be configured to automatically download updates?	
Are there any known compatibility issues with Microsoft SCEP or McAfee VirusScan software?	
Are there any known compatibility issues with the SCCM client?	
Can the Windows XP/7/8/10 firewall be enabled without impacting client software functionality?	
Any non-standard network ports used by the application software? If so, enumerate and explain.	
Can the application software be accessed via Citrix? Published application or Citrix RDP or both?	
Can the application software be accessed via VMWare View? Published application by VMWare ThinApp or Citrix XenApp or both?	

Web User Interface	
Is a web-enabled user interface available? If so, is it a standard feature, optional feature, or an add-on?	
Are there any differences in functionality between the native client interface (if any) and the web interface?	
Web application server platform? (e.g. IIS 6.0, TomCat, WebSphere, JRUN, etc.)	
What browser plugins (e.g., Flash, Java) are required, if any? What other client-side web technologies are used, if any? (e.g., Javascript, VBScript, ActiveX, DHTML, AJAX, COMET, ASP.NET, etc.)	
Describe any supported web services interfaces and data representations (e.g., XML, SOAP, WSDL, REST, JSON, UDDI, etc.).	
Can a digital server certificate be installed on the web server to enable support of encrypted sessions (SSL)?	
Does application function correctly with the following browser/OS platform combinations (specify version numbers): <ul style="list-style-type: none"> • Internet Explorer 8.0 or later on Windows? • Firefox version 2.0 and later on Windows, LINUX, and Mac OS X? • Safari 2.0 and later on Mac OS X? 	
List all other browser types and versions supported (e.g. Opera, Chrome, etc.).	

Reports	
Are the system's standard reports customizable and/or configurable?	
Does the system provide report writer and ad-hoc query tools? <ul style="list-style-type: none"> • If so, is this vendor-developed software or third-party bundled software? • Are the ad-hoc query capabilities of the system sufficient to address the user reporting needs? 	
Compatible with Crystal Reports for report generation?	
If the product uses Crystal Reports, can the licenses be unbundled to leverage existing HHSC licenses?	
Report scheduling available?	
Web-enabled reports available (HTML, PDF, Excel, other)?	
Can reports be scheduled and delivered automatically via e-mail or FTP?	
Can reports be delivered as PDF or Excel files via e-mail?	
Is report security and access integrated with application security?	
Is the system capable of restricting user access to patient confidential information?	
Are report training classes and documents available?	

Database	
Database engine(s) and versions supported? (Oracle, Microsoft SQL Server, etc.)	
Length of time on primary database platform and version, and number of customers in production?	
Long-term database strategy? (e.g. plan to move to Oracle, plan to move to other database platforms, no change, etc.)	
Database model/dictionary available under non-disclosure agreement?	
If compatible with MS SQL, can SQL license fees be unbundled to leverage HHSC's existing enterprise license?	
Recommended on-site technical support staffing levels during installation and configuration? (e.g. what % of an DBA FTE is needed)	
Recommended on-site technical support staffing levels after system is in production? (e.g. what % of an DBA FTE is needed)	
Data conversion/migration aids? Are consulting services available for conversion?	
Are there any limitations/restrictions for 3 rd party monitoring utilities?	
Are there any limitations/restrictions for 3 rd party backup agents (e.g. incompatibility with Avamar Agent)?	
For products that don't run on	

Oracle or Microsoft SQL Server: is 100% 24x7 vendor support available for installation, configuration, tuning, maintenance, disaster recovery, upgrades, etc.?	
For products that don't run on Oracle or Microsoft SQL Server: what monitoring solutions are available for the database?	
For products that don't run on Oracle or Microsoft SQL Server: what backup solutions are available for the database? Can database backups be performed without downtime?	

Network Requirements	
Does the application require network protocols other than TCP/IP?	
Does the application require IP Multicast communication?	
What TCP-based protocols are required for proper operation of the application? (e.g. FTP, HTTP, TelNet)	
Are static IP's required for the server?	
Are static IP's required for the clients? Can DHCP be used on the clients?	
Is there a need for load balancing of multiple servers?	
Will the client and server virus protection and patch level be maintained by ITD?	
Is there a need for remote access?	

If remote access is needed for application support, what methods are used?	
What is the projected network bandwidth requirement?	
For WAN or remote access, is there acceptable performance over Internet VPN with broadband? (e.g. DSL, cable modem)	
Are there any special network segmentation requirements?	
Can the server(s) and clients be on different subnets/VLANs?	
Are there any limitations on number of router hops or other topology issues?	
Is there a need for application-specific firewalling?	
Is there a need for access to the Internet from the server?	
What are the DNS requirements?	
How many new devices will be placed on the network in the data center?	
How many new devices will be placed on the network within the firewall and outside the data center?	

Security

Briefly describe the account management tools.	
Does the application support account expiration? (i.e. can a "stop date" be configured at the time the account is created)	
Is the application security based on or interoperable with Microsoft Active Directory?	
Does the application support LDAP directory services?	
If not compatible with Microsoft Active Directory, is the application security based on the host operating system security, database security, or unique to the application?	
Does the application support a user-changeable password?	
Does the application support password aging? (i.e. is user required to change their password after a configurable period)	
Does the application support a configurable password history preventing reuse of passwords?	
Does the application support policies enforcing selection of strong passwords (e.g. minimum password length, inclusion of numeric or special characters)?	

Does the application support configurable account lockouts? (e.g. a user's account is locked if an incorrect password is entered 3 times in a row)	
Are failed authentication attempts recorded/reported?	
Are attempts to login via an account with administrative rights recorded/reported?	
Does the application support a configurable session lock or session timeout based on user inactivity?	
Does the application support stateful session management?	
Does the application support 2-factor authentication?	
If applicable, does the application support AAA (authentication, authorization, accounting) services (eg Cisco ACS)?	
Does the application encrypt usernames and passwords when they are transmitted over the network?	
Does the application store user passwords in encrypted form, both in volatile and non-volatile storage?	
Is the network traffic between the application and client encrypted? If so, describe the encryption protocol used.	
Does the application support role-based access control (RBAC)?	
Are all accesses to clinical data (including viewing) logged with the user ID, date, time, patient ID, type of information viewed?	

What types of security, application access, error, and similar logs are generated and can they be exported to a central log aggregation server or accessed directly by a log aggregation server?	
Does the application support schedulable surveillance/audit reports?	
Does the application support ad-hoc audit capabilities by patient, user, date, type of access, etc.?	
If this is a custom application, has it undergone a threat modeling process?	
Does the web client (if any) use the same account (username and password) as the native client?	
For clinical applications, does the system have the ability to process and honor a confidentiality flag transmitted by the HIS to ensure that restricted patient information can only be seen by users with appropriate roles and access rights?	

Technical Support	
Nature of support during normal business hours? How is it accessed?	
Extra charge for 7x24 support?	
Support escalation procedure?	
Documented SLA for trouble tickets?	
Remote access needed for vendor technical support staff?	
Dedicated network connection or VPN access required? If VPN, can	

vendor use Cisco AnyConnect client or set up a site-to-site VPN?	
Direct modem attachment to server required?	
Web site for problem/bug reports?	
Web site for application knowledge-base and FAQs?	
Licensing structure – per named user, per concurrent user, or per CPU? Floating licenses available? Site or enterprise licenses available?	
Known integration with other products? How is this supported?	

Miscellaneous Issues	
If native client is used, is it e-mail enabled? (MAPI, POP, or SMTP)	
Are customizations automatically migrated with version upgrades of the base product?	
Is the database schema and data dictionary documented and available (under non-disclosure if necessary)?	

APPENDIX A

PROPOSAL TRANSMITTAL COVER LETTER

(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 "[Physician Credentialing Solution]", RFP # HHSC FY19-004, 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

MANDATORY - PROPOSAL SUBMISSION CHECKLIST

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

PLEASE CHECK OFF:

OFFEROR Shall Check Off Submitted	Proposal Items	HHSC Internal Use ONLY
	Proposal Received "On-Time"	<input type="checkbox"/>
<input type="checkbox"/>	One (1) Original & One (1) electronic file emailed to ndelima@hhsc.org	<input type="checkbox"/>
<input type="checkbox"/>	Proposal Transmittal Cover Letter:	<input type="checkbox"/>
<input type="checkbox"/>	<ul style="list-style-type: none"> Official Business Letterhead 	<input type="checkbox"/>
<input type="checkbox"/>	<ul style="list-style-type: none"> Authorized Signature 	<input type="checkbox"/>
<input type="checkbox"/>	<ul style="list-style-type: none"> Corporate Seal or Notarized 	<input type="checkbox"/>
<input type="checkbox"/>	<ul style="list-style-type: none"> Required Information 	<input type="checkbox"/>
<input type="checkbox"/>	Technical Proposal	<input type="checkbox"/>
<input type="checkbox"/>	<ul style="list-style-type: none"> Background, Qualifications and Experience 	<input type="checkbox"/>
<input type="checkbox"/>	<ul style="list-style-type: none"> Personnel Organization and Staffing 	<input type="checkbox"/>
<input type="checkbox"/>	<ul style="list-style-type: none"> Management and Control 	<input type="checkbox"/>
<input type="checkbox"/>	Cost Proposal	<input type="checkbox"/>
<input type="checkbox"/>	<ul style="list-style-type: none"> Summary 	<input type="checkbox"/>
<input type="checkbox"/>	<ul style="list-style-type: none"> 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	<input type="checkbox"/>

**HAWAII HEALTH SYSTEMS CORPORATION
AGREEMENT FOR GOODS OR SERVICES
BASED UPON
COMPETITIVE SEALED PROPOSALS**

AGREEMENT #: FY _____

THIS AGREEMENT, executed on the respective dates of the signatures of the parties shown hereafter, is effective as of [Insert Month Day, Year], between the **Hawaii Health Systems Corporation** (hereinafter "HHSC"), by its Chief Executive Officer, (hereinafter "CEO"), whose address is 3675 Kilauea Avenue, Honolulu, Hawaii 96816, and [Insert Vendor Name] (hereinafter "CONTRACTOR"), a [Insert corporation, partnership, sole proprietorship, or other legal form of the Contractor], under the laws of the State of [Insert State of Incorporation], whose business address is [Insert Contractor Address] and taxpayer identification number, Tax ID #: Hawaii Tax No. XXXXXX; FEIN No. XXXXXX.

RECITALS

- A. The HHSC is in need of the goods or services, or both, described in this Agreement and its attachments.
- B. The HHSC has issued a request for competitive sealed proposals, and has received and reviewed proposals submitted in response to the request.
- C. The solicitation for proposals and the selection of the CONTRACTOR were made in accordance with section 103D-303, Hawaii Revised Statutes ("HRS"), Hawaii Administrative Rules ("HAR") Title 3, Department of Accounting and General Services, Subtitle 11, Chapter 122 Subchapter 6, and applicable procedures established by HHSC.
- D. The CONTRACTOR has been identified as the responsible and responsive offeror whose proposal is the most advantageous for the HHSC, taking into consideration price and the evaluation factors set forth in the request.
- E. The HHSC desires to retain and engage the CONTRACTOR to provide the goods or services, or both, as the case may be, and the CONTRACTOR is agreeable to providing said goods or services, or both.

NOW, THEREFORE, in consideration of the promises contained in this Agreement, the HHSC and the CONTRACTOR agree as follows:

- 1. **SCOPE OF SERVICES.** The CONTRACTOR shall, in a proper and satisfactory manner as determined by the HHSC, provide all the goods or services set forth in the request for competitive sealed proposals, **RFP # HHSC _____** ("RFP"), and the CONTRACTOR'S accepted proposal, including any and all revisions/addendum's/negotiated agreements thereto (collectively "PROPOSAL"), both of which, even if not physically attached to this Agreement, are hereby made a part of this Agreement.
- 2. **TIME OF PERFORMANCE.** The performance required of the CONTRACTOR under this Agreement shall be executed in accordance with the time period set forth in the **Attachment 2**, which is made a part of this Agreement.

3. **COMPENSATION.** The CONTRACTOR shall be compensated for goods supplied or services performed, or both, under this Agreement in a total amount not to exceed _____ DOLLARS (\$000,000.00), including taxes, at the time and in the manner set forth in the RFP and CONTRACTOR'S Proposal.

4. **BONDS.** The CONTRACTOR ☐ (is) or ☐ (is not) required to provide a (performance) or (payment) (performance and payment) bond in the amount of _____ DOLLARS (\$000,000.00).

5. **STANDARDS OF CONDUCT DECLARATION.** The Standards of Conduct Declaration of the CONTRACTOR is attached and is made a part of this Agreement.

6. **OTHER TERMS AND CONDITIONS.** The General Conditions and any Special Conditions are attached hereto and made a part of this Agreement (or, Any Special Conditions are attached hereto and made a part of this Agreement). In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. In the event of a conflict among the documents, the order of precedence shall be as follows: (1) Agreement, including all attachments and addenda; (2) Request, including all attachments and addenda; and (3) Proposal.

7. **LIQUIDATED DAMAGES.** Liquidated damages shall be assessed in the amount of _____ DOLLARS (\$000,000.00) per day, in accordance with the terms of Section 9 of the General Conditions.

8. **NOTICES.** Any written notice required to be given by any party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice required to be given to the CEO shall be sent to: HHSC, President & Chief Executive Officer, HHSC, 3675 Kilauea Avenue, Honolulu, Hawaii 96816. Notice to the "head of the purchasing agency" and/or "Agency Procurement Officer" as denoted in the General Conditions shall be sent to: HHSC, Attn: Procurement Office, 3675 Kilauea Avenue, Honolulu, Hawaii 96816. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address as indicated in this Agreement. A notice shall be deemed to have been received three (3) days after mailing or at the time or actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the HHSC in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Agreement by their signatures, on the dates below, to be effective as of the date first above written.

HHSC:

(Signature)

Edward N. Chu

(Printed Name)

HHSC Chief Financial Officer

(Title)

(Date)

CONTRACTOR:

~~Sample-Do Not Sign~~

(Signature)

(Printed Name)

(Title)

(Date)

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.

Edward N. Chu
Chief Financial Officer
Hawaii Health Systems Corporation

Date: _____

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 Agreement to the State or HHSC 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 or ☐ IS NOT a legislator or an employee or a business in which a legislator or an employee has a controlling interest (Section 84-15(a), HRS).
2. CONTRACTOR has not been assisted or represented personally in the matter by an individual who has been an employee of HHSC within the preceding two years and who participated while so employed in the matter with which the Agreement is directly concerned. (Section 84-15(b), HRS).
3. 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 this Agreement, if the legislator or employee had been involved in the development or award of the Agreement. (Section 84-14(d), HRS).
4. CONTRACTOR has not been represented on matters related to this Agreement, for a fee or other consideration by an individual who, within the past twelve (12) months, served as an HHSC employee or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Agreement (HRS 84-18(b) and (c), HRS).

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: Sample-Do Not Sign

Print Name: _____

Print Title: _____

Date: _____

Name of CONTRACTOR: _____

****Reminder to contracting facility:** if "is" is circled, and the Agreement involves goods or services of a value in excess of \$10,000, the Agreement must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, HHSC/Contracting facility may not award the Agreement unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission prior to contracting. (Section 84-15(a), HRS).

SCOPE OF SERVICES

TIME OF PERFORMANCE

1. The CONTRACTOR shall provide the services required under this Agreement for a period of Two (2) years from _____, 2012 to and including _____, 2014, unless sooner terminated or extended as provided.
2. **OPTION TO EXTEND:** The TIME OF PERFORMANCE of this Agreement may be extended for Three (3) additional one (1) year intervals, subject to mutual written agreement between HHSC and the CONTRACTOR prior to the end of the current contract period. A Supplemental Agreement will be executed by the CONTRACTOR and HHSC to exercise extensions.

COMPENSATION AND PAYMENT SCHEDULE

In full consideration for the services to be performed by the CONTRACTOR under this Agreement, the HHSC agrees, subject to appropriation and allotments, to pay to the CONTRACTOR a total sum of money not to exceed _____

DOLLARS (\$000,000.00), including all applicable taxes and expenses incurred, and in accordance with the following:

The CONTRACTOR shall submit invoices for approval and payment to the Hospital's "Technical Representative(s)" in accordance with provisions of Section 20 of the GENERAL CONDITIONS. Invoices shall reference the Agreement number and include, at a minimum, an itemized account of all compensation due.

HOSPITAL TECHNICAL REPRESENTATIVES

Kauai Region

Kauai Veterans Memorial Hospital

4643 Waimea Canyon Rd.

Waimea, HI 96796

Phone: 808-

Email: @hhsc.org

East Hawaii Region

Hilo Medical Center

1190 Waianuenue Ave.

Hilo, HI 96720

Phone: 808-

Email: @hhsc.org

Maui Region

Maui Memorial Medical Center

221 Mahalani St.

Wailuku, HI 96793

Phone: 808-

Email: @hhsc.org

West Hawaii Region

Kona Community Hospital

79-1019 Haukapila St.

Kealahou, HI 96750

Phone: 808-

Email: @hhsc.org

Oahu Region

Maluhia Hospital

1027 Hala Drive

Honolulu, Hawaii 96817

Phone: 808-

Email: @hhsc.org

HAWAII HEALTH SERVICES CORPORATION

Information Technology

Special Terms and Conditions for Software and Services

1) Definitions: As used herein;

“Acceptance” shall mean that the Software has passed its Acceptance Testing and shall be formalized in a written notice from HHSC to CONTRACTOR; or, if there is no Acceptance Testing, Acceptance shall occur upon the first productive use of the system by HHSC.

“Acceptance Date” shall mean the date upon which HHSC accepts the Software as provided in the contract; or, if there is no Acceptance Testing, Acceptance Date shall mean the date upon the first productive use of the system by HHSC.

“Acceptance Testing” shall mean the process for ascertaining that the Software meets the standards set forth in the contract prior to Acceptance by the HHSC.

“Business Days and Hours” shall mean Monday through Friday, 6:00 a.m. to 6:00 p.m., Hawaii Standard Time. HI state holidays may be non-standard work days for HHSC and therefore subject to overtime.

“Confidential Information” shall mean information that may be exempt from disclosure to the public or other unauthorized persons under state or federal statutes or regulations and/or any data that may be expressly identified by Federal, State, certifying agency or entity. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, medical record identifiers, HHSC source code or object code, or HHSC security data, as well as any data deemed to be “protected health information” (PHI) under HIPAA regulations.

“Contract” shall mean this document, all schedules and exhibits, and all amendments hereto.

“CONTRACTOR” shall mean CONTRACTOR, its employees and agents. CONTRACTOR also includes any firm, provider, organization, individual, or other entity performing the business activities under this Contract. It shall also include any Subcontractor retained by CONTRACTOR as permitted under the terms of this Contract.

“CONTRACTOR Account Manager” shall mean a representative of CONTRACTOR who is assigned as the primary contact person whom the HHSC Technical Representative or Project Manager shall work with for the duration of this Contract and as further defined in the contract.

“Deliverables” shall mean all project materials, including goods, software, data, and documentation created during the performance or provision of services hereunder. Deliverables include “Work Product” and means any expression of Licensor’s findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, and other technical information; but not source and object code or software. All Software source and object code is the property of Licensor and is licensed nonexclusively to the HHSC, at no additional license fee, pursuant to the terms of the software license contained herein, and in the Supplemental Terms and Conditions for Software and Services or the License Agreement if incorporated in the Solicitation Documents. **“Delivery Date”** shall mean the date by which the Products ordered hereunder must be delivered. **“Effective Date”** shall mean the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

“Help Desk” shall mean a service provided by CONTRACTOR for the support of CONTRACTOR’s Products. HHSC shall report warranty or maintenance problems to CONTRACTOR’s Help Desk for initial troubleshooting and possible resolution of the problems or for the initiation of repair or replacement services.

“Installation Date” shall mean the date by which all Software ordered hereunder shall be in place, in good working order and ready for Acceptance Testing.

“HHSC” shall mean the Hawaii Health Systems Corporation, any of its regions, hospitals, facilities, affiliates or any of the officers or other officials lawfully representing HHSC.

“HHSC Technical Representative or Project Manager” shall mean the person designated by HHSC who is assigned as the primary contact person whom CONTRACTOR’s Account Manager shall work with for the duration of this Contract and as further defined in the contract.

“License” shall mean the rights granted to HHSC to use the Software that is the subject of this Contract.

“Price” shall mean charges, costs, rates, and/or fees charged for the Products and Services under this Contract and shall be paid in United States dollars.

“Product(s)” shall mean any CONTRACTOR-supplied equipment, Software, and documentation.

“Proprietary Information” shall mean information owned by CONTRACTOR to which CONTRACTOR claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

“Solicitation” shall mean the solicitation document(s) used to establish this Contract, including all its amendments, modifications and exhibits.

“Response” shall mean CONTRACTOR’s Response to HHSC’s solicitation.

“Services” shall mean those Services provided under this Contract and related to the Software License(s) being purchased that are appropriate to the scope of this Contract and includes such things as installation Services, maintenance, training, etc.

“Software” shall mean the object code version of computer programs licensed pursuant to this Contract. Software also means the source code version, where provided by CONTRACTOR. Embedded code, firmware, internal code, microcode, and any other term referring to software residing in the equipment that is necessary for the proper operation of the equipment is not included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections.

“Specifications” shall mean the technical and other specifications set forth in the HHSC statement of Work (SOW), solicitation, any additional specifications set forth in CONTRACTOR’s Response, and the specifications set forth in CONTRACTOR’s Product documentation, whether or not CONTRACTOR produces such documentation before or after this Contract’s Effective Date.

“Standard of Performance” shall mean the criteria that must be met before Software Acceptance, as set forth in the contract. The Standard of Performance also applies to all additional, replacement or substitute Software and Software that is modified by or with the written approval of CONTRACTOR after having been accepted.

“Statement of Work (SOW)” shall be a requirement for any IT contract. SOW should include agreement to a particular project management approach and specify/require reporting on budget/timeline. Component parts of a SOW should include following examples:

- Scope of work
- Conversion plan
- Down-time procedures
- Description of training approach to be used (i.e. train the trainer, use of in-house trainers, purchase training)

“Subcontractor” shall mean one not in the employment of CONTRACTOR, who is performing all or part of the business activities under this Contract under a separate contract with CONTRACTOR. The term “Subcontractor” means Subcontractor(s) of any tier.

“Work Product” shall mean data and products produced under this Contract including but not limited to, regardless of medium/media used, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law.

2) Standards: Manufactured items and/or fabricated assemblies comprising Deliverables shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution, if applicable. CONTRACTOR will provide and maintain a quality assurance system or program that includes any Deliverables and will tender to the HHSC only those Deliverables that have been inspected and found to conform to the requirements of this Contract. All manufactured items and/or fabricated assemblies comprising Deliverables are subject to operation, certification or inspection, and accessibility requirements as required:

- by HHSC or federal Regulation,

- Where applicable, software must be certified in accordance with Office of the National Coordinator of Health Information Technology (ONC) regulations regarding provider demonstration of “meaningful use” of health information technology to qualify for economic incentives,
- Acceptance with appropriate standards of operations or uses of said Deliverables as may be shown by identification markings or other means of the appropriate certifying standards organization.

a) **Site Preparation:** CONTRACTORS shall provide HHSC complete site requirement specifications for the Deliverables, if any. These specifications shall ensure that the Deliverables to be installed shall operate properly and efficiently within the site environment, including Deliverables hosted at a remote site. The CONTRACTOR shall advise the HHSC of any site requirements, including remote hosting, for any Deliverables required by the HHSC’s specifications. Any alterations or modification in site preparation which are directly attributable to incomplete or erroneous specifications provided by the CONTRACTOR and which would involve additional expenses to the HHSC, shall be made at the expense of the CONTRACTOR.

b) **Goods Return:** Deliverables and any other goods or materials furnished by the CONTRACTOR to fulfill technical requirements shall be in good working order and be maintained in good working order by CONTRACTOR for the duration of the Contract; unless otherwise provided in a separate maintenance agreement or in the Solicitation Documents. Deliverables failing to meet the HHSC’s technical requirements shall be considered non-conforming goods and subject to return to the CONTRACTOR for replacement at the HHSC’s option, and at the CONTRACTOR’s expense. The HHSC is responsible for the return costs related to the termination of a Contract, including deinstallation, and freight to destinations within the United States; except in the case of default by the CONTRACTOR or delivery of non-conforming goods by CONTRACTOR. Shipping or freight charges, if any, paid by the HHSC for non-conforming goods will be reimbursed to the HHSC by CONTRACTOR.

c) **Specifications:** The apparent silence of the specifications as to any detail, or the apparent omission of detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and only material and workmanship of the first quality may be used. Upon any notice of noncompliance provided by the HHSC, CONTRACTOR shall supply proof of compliance with the specifications. CONTRACTOR must provide written notice of its intent to deliver alternate or substitute products, goods or Deliverables. Alternate or substitute products, goods or Deliverables may be accepted or rejected in the sole discretion of the HHSC; and any such alternates or substitutes must be accompanied by CONTRACTOR’s certification and evidence satisfactory to the HHSC that the function, characteristics, performance and endurance will be equal or superior to the original Deliverables specified.

3) Personnel: CONTRACTOR shall not substitute key personnel assigned to the performance of this Contract without a minimum of 30-day notice and prior written approval by the HHSC Contract Administrator. Any desired substitution shall be noticed to the HHSC’s Contract Administrator accompanied by the names and references of CONTRACTOR’s recommended substitute personnel. The HHSC will approve or disapprove the requested substitution in a timely manner. The HHSC may, in its sole discretion, terminate the services of any person providing services under this Contract. Upon such termination, the HHSC may request acceptable substitute personnel or terminate the contract services provided by such personnel.

4) Software License (for internal embedded software, firmware and unless otherwise provided in the HHSC’s solicitation document or in an attachment hereto):

a) Deliverables comprising goods, equipment or products (hardware) may contain software for internal operation, or as embedded software or firmware that is generally not sold or licensed as a severable software product. Software may be provided on separate media, such as CD-ROM, or may be included within the hardware at or prior to delivery. Such software is proprietary, copyrighted, and may also contain valuable trade secrets and may be protected by patents. CONTRACTOR grants the HHSC a license to use the Code (or any replacement provided) on, or in conjunction with, only the Deliverables purchased, or with any system identified in the solicitation documents. This includes using the Code to interface system data with other systems, in accordance with the scope of work defined in the solicitation. The HHSC shall have a worldwide, nonexclusive, non-sublicensable license to use such software and/or documentation for its internal use by anyone performing duties on behalf of HHSC to fulfill their work obligations. The HHSC may make and install copies of the software to support the authorized level of use. Provided, however that if the hardware is inoperable, the software may be copied for temporary use on other hardware. The HHSC shall promptly affix to any such copy the same proprietary and copyright notices affixed to the original. The HHSC may make one copy of the

software for archival, back-up or disaster recovery purposes. The HHSC reserves the right to subcontract the operation of the software to a qualified third-party "business associate", which will be bound by all obligations specified herein. HHSC shall have the right to access the Code in a remote hosted environment. The license set forth in this Paragraph shall terminate immediately upon the HHSC's discontinuance of the use of the equipment on which the software is installed. The software may be transferred to another party only with the transfer of the hardware. If the hardware is transferred, the HHSC shall i) destroy all software copies made by the HHSC, ii) deliver the original or any replacement copies of the software to the transferee, and iii) notify the transferee that title and ownership of the software and the applicable patent, trademark, copyright, and other intellectual property rights shall remain with CONTRACTOR, or CONTRACTOR's licensors. The HHSC shall not disassemble, decompile, reverse engineer, modify, or prepare derivative works of the embedded software, unless permitted under the solicitation documents.

b) For any additional software or subscription services not directly offered by CONTRACTOR, the CONTRACTOR shall specify what additional "sublicensed software" is required, any associated costs and how HHSC will be able to access support and maintenance for this sublicensed software, should it be necessary.

5) Deliverables: Deliverables are the property of the HHSC and must be kept confidential or returned to the HHSC, or destroyed as required by the HHSC. Proprietary CONTRACTOR materials licensed to the HHSC shall be identified to the HHSC by CONTRACTOR prior to use or provision of services hereunder and shall remain the property of the CONTRACTOR. Embedded software or firmware shall not be a severable Deliverable. The HHSC's solicitation document may supplement or substitute this definition and the requirements set forth in this Paragraph.

6) Late Delivery, Back Order: CONTRACTOR shall advise the HHSC Technical Representative or Project Manager immediately upon determining that any Deliverable will not, or may not, be delivered at the time or place specified. Together with such notice, CONTRACTOR shall state the projected delivery time and date. In the event the delay projected by CONTRACTOR is unsatisfactory, the HHSC shall so advise CONTRACTOR and may proceed to procure substitute Deliverables or services.

7) Date and Time Warranty: The CONTRACTOR warrants that any Deliverable, whether hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interface therein which performs any date and/or time data recognition function, calculation, or sequencing, will provide accurate date/time data and leap year calculations. This warranty shall survive termination or expiration of the Contract.

8) No Surreptitious Code Warranty:

a) CONTRACTOR warrants to HHSC that no licensed copy of the Software provided to HHSC contains or will contain any Self-Help Code nor any Unauthorized Code as defined below. CONTRACTOR further warrants that CONTRACTOR will not introduce, via modem or otherwise, any code or mechanism that electronically notifies CONTRACTOR of any fact or event, or any key, node, lock, time-out, or other function, implemented by any type of means or under any circumstances, that may restrict HHSC's use of or access to any program, data, or equipment based on any type of limiting criteria, including frequency or duration of use for any copy of the Software provided to HHSC under this Contract. The warranty is referred to in this Contract as the "No Surreptitious Code Warranty."

b) As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. Self-Help Code does not include software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g., remote access via modem) solely for purposes of maintenance or technical support.

c) As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, worm or other software routines or equipment components designed to permit unauthorized access, to disable, erase, or otherwise harm Software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.

d) CONTRACTOR will defend HHSC against any claim, and indemnify HHSC against any loss or expense arising out of any breach of the No Surreptitious Code Warranty. No limitation of liability, whether contractual or statutory, shall apply to a breach of this warranty.

9) Patent, Copyright, and Trade Secret Protection:

a) CONTRACTOR has created, acquired or otherwise has rights in, and may, in connection with the performance of services for the HHSC, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the "CONTRACTOR Technology"). To the extent that any CONTRACTOR Technology is contained in any of the Deliverables including any derivative works, the CONTRACTOR hereby grants the HHSC a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such CONTRACTOR Technology in connection with the Deliverables for the HHSC's purposes.

- b) CONTRACTOR shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the HHSC to CONTRACTOR. The HHSC hereby grants CONTRACTOR a royalty-free, fully paid, worldwide, perpetual, non-exclusive license for CONTRACTOR's internal use to non-confidential Deliverables first originated and prepared by the CONTRACTOR for delivery to the HHSC
- c) The CONTRACTOR, at its own expense, shall defend any action brought against the HHSC to the extent that such action is based upon a claim that the services or Deliverables supplied by the CONTRACTOR, or the operation of such Deliverables pursuant to a current version of CONTRACTOR-supplied software, infringes a United States patent, or copyright or violates a trade secret. The CONTRACTOR shall pay those costs and damages finally awarded against the HHSC in any such action. Such defense and payment shall be conditioned on the following:
- d) That the CONTRACTOR shall be notified within a reasonable time in writing by the HHSC of any such claim; and,
- e) That the CONTRACTOR shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the HHSC shall have the option to participate in such action at its own expense.
- f) Should any services or software supplied by CONTRACTOR, or the operation thereof become, or in the CONTRACTOR's opinion are likely to become, the subject of a claim of infringement of a United States patent, copyright, or a trade secret, the HHSC shall permit the CONTRACTOR, at its option and expense, either to procure for the HHSC the right to continue using the goods/hardware or software, or to replace or modify the same to become non-infringing and continue to meet procurement specifications in all material respects. If neither of these options can reasonably be taken, or if the use of such goods/hardware or software by the HHSC shall be prevented by injunction, the CONTRACTOR agrees to take back such goods/hardware or software, and refund any sums the HHSC has paid CONTRACTOR less any reasonable amount for use or damage and make every reasonable effort to assist the HHSC in procuring substitute Deliverables. If, in the sole opinion of the HHSC, the return of such infringing Deliverables makes the retention of other items of Deliverables acquired from the CONTRACTOR under this Contract impractical, the HHSC shall then have the option of terminating the Contract, or applicable portions thereof, without penalty or termination charge. The CONTRACTOR agrees to take back such Deliverables and refund any sums the HHSC has paid CONTRACTOR less any reasonable amount for use or damage.
- g) CONTRACTOR will not be required to defend or indemnify the HHSC if any claim by a third party against the HHSC for infringement or misappropriation (i) results from the HHSC's alteration of any CONTRACTOR-branded product or Deliverable, or (ii) results from the continued use of the good(s) or Services and Deliverables after receiving notice they infringe a trade secret of a third party.
- h) Nothing stated herein, however, shall affect CONTRACTOR's ownership in or rights to its preexisting intellectual property and proprietary rights.

10) Limitation of Liability: The parties agree that neither CONTRACTOR nor HHSC shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on a Date Warranty or No Surreptitious Code Warranty issue or patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties.

11) Supplement: The additional terms and conditions set forth herein shall supplement the HHSC General Terms and Conditions for Goods and Services. In the event of a conflict between these Special Conditions and the General Terms and Conditions, or any other document, the order of precedence shall be as determined in the Agreement. If not otherwise determined, the order of priority shall be: 1) the Special Conditions; 2) HHSC Agreement, Statements of Work (SOW) and General Terms and Conditions for Goods and Services; 3) CONTRACTOR'S agreed upon terms and licensing agreement, if any; 4) HHSC's solicitation documents; 5) CONTRACTOR's proposal.

12) Restrictions: HHSC's use of the CONTRACTOR's Software is restricted as follows:

- a) The license granted herein is granted to the HHSC Entities as defined above. If the License Grant and License Fees are based upon the number of Users, the number of Users may be increased at any time, subject to the restrictions on the maximum number of Users specified in the solicitation documents. Under no circumstance will a qualified User be

denied access to the Software, even if that user represents an increase over the maximum number of users authorized. CONTRACTOR will specify in its Response how it counts Users and what the procedure is for allowing larger number of Users on the Software than specified in the original contract.

b) No right is granted hereunder to HHSC contractors to use the Software except as incidental to work being performed by the contractor on HHSC's behalf.

c) The HHSC may not copy, distribute, reproduce, use, lease, rent or allow access to the Software except as explicitly permitted under this Agreement, and HHSC will not modify, adapt, translate, prepare derivative works (unless allowed by the solicitation documents or SOW,) decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Software or any internal data files generated by the Software.

d) HHSC shall not remove, obscure or alter CONTRACTOR's copyright notice, trademarks, or other proprietary rights notices affixed to or contained within the Software.

13) CONTRACTOR's Retained Rights: Subject only to the rights granted to HHSC hereunder, CONTRACTOR retains all right, title and interest in and to the Software and all copies of the Software, including without limitation all modifications, enhancements, upgrades and new versions with respect to any of the foregoing, all patent rights, copyrights and trade secret rights embodying any of the foregoing, and all know-how, concepts, inventions and ideas related to the foregoing. HHSC shall provide CONTRACTOR with access to HHSC's facilities, at reasonable times and upon reasonable notice, to verify HHSC's compliance with the terms of this Agreement.

14) Support or Maintenance Services: This paragraph recites the scope of maintenance services due under the license granted, if not superseded by a separate licensing and maintenance agreement or as may be in the solicitation documents. Subject to payment of a Support Service or Maintenance Fee stated in the solicitation documents for the first year and all subsequent years, if requested by the HHSC, CONTRACTOR agrees to provide the following support services ("Support Services") for the current version and one previous version of the Software commencing upon delivery of the Software:

a) Error Correction: If the error conditions reported by the HHSC are not corrected in a timely manner, as determined by HHSC, the HHSC may request a replacement copy of the licensed Software from CONTRACTOR. In such event, and if practicable, CONTRACTOR shall then deliver a replacement copy, together with corrections and updates, of the licensed Software within 24 hours of the HHSC's request at no added expense to the HHSC. CONTRACTOR shall notify the HHSC of any material errors or defects in the Deliverables known, or made known to CONTRACTOR from any source during the Contract term that could cause the production of inaccurate or otherwise materially incorrect, results. CONTRACTOR shall initiate actions as may be commercially necessary or proper to effect corrections of any such errors or defects, at no cost to the HHSC.

b) Other Agreement: This Paragraph may be superseded by agreement provided that support and maintenance services shall be fully described in a separate agreement annexed hereto and incorporated herein;

c) Temporary Extension of License: If any licensed Software or CPU/computing system on which the Software is installed fails to operate or malfunctions, the term of the license granted shall be temporarily extended to another CPU selected by the HHSC and continue until the earlier of:

- i) Return of the inoperative CPU to full operation, or
- ii) Termination of the license.

d) Encryption Code: CONTRACTOR shall provide any temporary encryption code or authorization necessary or proper for operation of the licensed Software under the foregoing temporary license. The HHSC will provide notice by expedient means, whether by telephone, e-mail or facsimile of any failure under this paragraph. On receipt of such notice, CONTRACTOR shall issue any temporary encryption code or authorization to the HHSC within 24 hours; unless otherwise agreed.

e) Updates. CONTRACTOR shall provide to the HHSC, at no additional charge, all new releases and bug fixes (collectively referred to as "Updates") for any Software Deliverable developed or published by CONTRACTOR and made generally available to its other customers at no additional charge. All such Updates shall be a part of the Program and Documentation and, as such, be governed by the provisions of this Agreement.

f) Telephone Assistance. CONTRACTOR shall provide the HHSC with telephone access to technical support engineers for assistance in the proper installation and use of the Software, and to report and resolve Software problems, 24 hours a day, seven days a week. CONTRACTOR shall respond to the telephone requests for Program

maintenance service, within four (4) hours, for calls made at any time. Requests deemed “urgent” by the HHSC will be responded to by CONTRACTOR immediately, with agreed-upon escalation paths utilized to facilitated rapid resolution. Access to such assistance shall be unlimited, unless explicitly stated otherwise in a contract between CONTRACTOR and the HHSC.

g) Environment. CONTRACTOR shall support all applications in a “virtualized” environment and be able to support all applications in a remote-hosted environment of HHSC’s choosing. HHSC will have the right to subcontract operation of CONTRACTOR applications.

15) Termination of Support or Maintenance: If the HHSC fails to pay Support or Maintenance Services for the Software or choose not to pay for Support or Maintenance Services, the HHSC may continue to use the Software pursuant to the license granted hereunder, but will not be entitled to receive routine Support Services for such Software., effective 90 days after the date the payment is due. If the HHSC does not subscribe or purchase Support or Maintenance Services effective with the date of this Agreement, Support or Maintenance Services may be subsequently subscribed or purchased at any time during the term of this Agreement by payment of Support Service or Maintenance Fees at CONTRACTOR’s then current prices. During the term of this Agreement, the HHSC may also purchase additional implementation, consulting, and training services from CONTRACTOR at CONTRACTOR’s then current prices.

16) Program Retirement: CONTRACTOR retains the right to retire a version of the Program and stop providing Maintenance, Updates or Services, upon providing 18 months advance written notice to the HHSC of its intent to do so, unless otherwise stated in the solicitation documents. The decision to stop maintaining a version of the Program is the sole business discretion of CONTRACTOR and shall not be deemed a breach of contract. If CONTRACTOR retires the version of the Program provided to the HHSC and if the HHSC has paid all applicable annual Maintenance Fees subsequent to executing this Agreement, the HHSC shall be entitled to receive, at no additional charge, a newer version of the Program that supports substantially the same functionality as the licensed version of the Program. CONTRACTOR shall provide implementation services for a newer version at either no charge or a nominal charge. Newer versions of the Program containing substantially increased functionality will be made available to the HHSC for an additional reasonable fee.

17) Payment Terms: The total License Fee and the Support Service or Maintenance Fee (provided the HHSC subscribes or purchases such services) for the first year shall be invoiced upon delivery of the Software. The Support Service or Maintenance Fee for subsequent Agreement years, if any, will be invoiced annually 60 days prior to the anniversary date beginning each subsequent year. Increases in CONTRACTOR’s Agreement price for Support Services or Maintenance for each year following the first Agreement year shall be the lesser of 1) the annual percentage increase in the ECI Index for White Collar Workers or 2) three percent (3%). Payment terms for software are Net 60 days after receipt of correct invoice or acceptance of software, whichever is later. Payment terms for services are due and payable the month following the month for which charges accrue, or in accordance with the Agreement payment schedule. In the case of multiple HHSC regional participation in the Agreement as stated in the SOW, CONTRACTOR agrees to bill individual regions of the HHSC separately and each region is responsible for payments due from the respective region, only.

18) Acceptance Criteria: In the event acceptance of Deliverables is not described in additional Contract documents, the HHSC shall have the obligation to notify CONTRACTOR, in writing ten calendar days following installation of any Deliverable described in the Contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the HHSC shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of Deliverables. Final acceptance is expressly conditioned upon completion of all applicable inspection and testing procedures. Should the Deliverables fail to meet any specifications or acceptance criteria the HHSC may exercise any and all rights hereunder, including such rights provided by the Uniform Commercial Code as adopted in Hawaii Deliverables discovered to be defective or failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the Deliverables or non-compliance with the specifications was not reasonably ascertainable upon initial inspection. If the CONTRACTOR fails to promptly cure the defect or replace the Deliverables, the HHSC reserves the right to cancel the Purchase Order, contract with a different CONTRACTOR, and to invoice the original CONTRACTOR for any differential in price over the original Contract price. When Deliverables are rejected, the CONTRACTOR must remove the rejected Deliverables from the premises of the HHSC within seven calendar days of notification, unless otherwise agreed by the HHSC. Rejected

items may be regarded as abandoned if not removed by CONTRACTOR as provided herein.

19) Acceptance: Acceptance testing is required for all CONTRACTOR supplied software unless provided otherwise in the solicitation documents or a Statement of Work. The HHSC may define such processes and procedures as may be necessary or proper, in its opinion and discretion, to ensure compliance with the HHSC's specifications and CONTRACTOR's technical representations. Acceptance of software or services may be controlled by amendment hereto, or additional terms as agreed by the parties. In the event acceptance of software or services is not described in additional Agreement documents, the HHSC shall have the obligation to notify CONTRACTOR, in writing and within a reasonable time following installation of any software deliverable described in the Agreement if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the HHSC shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of software.

20) Warranty Terms: Notwithstanding anything in this Agreement or Exhibit hereto to the contrary, CONTRACTOR shall assign warranties for any Deliverable supplied by a third party to the HHSC.

a) CONTRACTOR warrants that any Software or Deliverable will operate substantially in conformity with prevailing specifications as defined by the current standard documentation (except for minor defects or errors which are not material to the HHSC) for as long as the HHSC is using the Software ("Warranty Period"), unless otherwise specified in the Solicitation Documents. If the Software does not perform in accordance with such specifications during the Warranty Period, CONTRACTOR will use reasonable efforts to correct any deficiencies in the Software so that it will perform in accordance with or substantially in accordance with such specifications. CONTRACTOR warrants that any updates provided will be documented in accordance with agreed-upon access (electronic or paper) for the HHSC and will not negatively impact any functionality specified by the HHSC in its scope of work. Any deviation from this will be remedied by CONTRACTOR at its own expense in a timely manner as determined by HHSC.

b) CONTRACTOR warrants to the best of its knowledge that:

- i) The licensed Software and associated materials do not infringe any intellectual property rights of any third party;
- ii) There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party;
- iii) The licensed Software and associated materials do not contain any surreptitious programming codes, viruses, Trojan Horses, "back doors" or other means to facilitate or allow unauthorized access to the HHSC's information systems.
- iv.) The licensed Software and associated materials do not contain any timer, counter, lock or similar device (other than security features specifically approved by Customer in the Specifications) that inhibits or in any way limits the Software's ability to operate.

c) UNLESS MODIFIED BY AMENDMENT OR THE SOLICITATION DOCUMENTS, THE WARRANTIES IN THIS PARAGRAPH ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OR WHETHER ARISING BY COURSE OF DEALING OR PERFORMANCE, CUSTOM, USAGE IN THE TRADE OR PROFESSION OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND NO OTHER REPRESENTATIONS OR WARRANTIES HAVE FORMED THE BASIS OF THE BARGAIN HEREUNDER.

21) Applies if marked (v): ☐ **Escrow of Code:** CONTRACTOR has established an Escrow Agreement ("Escrow Agreement") with a third party escrow agent acceptable to the HHSC, as required in the solicitation documents. Within thirty days from the Effective Date of the Agreement, CONTRACTOR will add the HHSC as a beneficiary to such Escrow Agreement of any/all supporting software to be utilized by HHSC. In the event (i) this Agreement is terminated due to insolvency or the filing of involuntary bankruptcy proceedings pursuant to Chapter 7 of the U.S. Bankruptcy Code and (ii) CONTRACTOR no longer offers support or maintenance services for the Software (both (i) and (ii) constituting the release condition ("Release Condition") under the Escrow Agreement), the Software code deposited in accordance with the Escrow Agreement (the "Deposit Materials") shall be delivered to the HHSC and the HHSC shall be granted a license to use the Deposit Materials solely to repair, maintain and support the Software licensed to HHSC pursuant to this

Agreement. The license to the Deposit Materials under this Section shall terminate upon the termination or cure of the Release Condition.

22) Confidentiality: CONTRACTOR shall employ security measures and standards, including encryption technologies, as may be necessary or proper, and as mutually agreed by the HHSC and CONTRACTOR during performance of this Agreement. CONTRACTOR and its agents, if any, shall not have access to any information except as required to perform CONTRACTOR's obligations under this Agreement.

23) Information Systems Policies: CONTRACTOR shall use commercially reasonable efforts to abide by any of HHSC's Corporate IT policies relating to the Scope of Work of the contract including, but not limited to, information systems access, use, storage, and disposal. HHSC acknowledges that abiding by such policy may cause delays in support that are not the responsibility of the CONTRACTOR. If HHSC wishes to modify any of the policies and such modification(s) would in any way be material to CONTRACTOR'S obligations under the contract, then HHSC will notify CONTRACTOR of such proposed change(s).

24) HHSC Property and Intangibles Rights: The parties acknowledge and agree that the HHSC shall own all right, title and interest in and to the copyright in any and all software, technical information, specifications, drawings, records, documentation, data and other work products first originated and prepared by the CONTRACTOR for delivery to the HHSC (the "Deliverables"). CONTRACTOR will seek permission 30 days in advance for the use of any HHSC corporate / region / facility logo. Material that is delivered under this Agreement, but that does not originate therefrom ("Preexisting Material"), shall be transferred to HHSC with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, for internal business purposes, and to authorize others to do so except that such license shall be limited to the extent to which CONTRACTOR has a right to grant such a license. CONTRACTOR shall exert all reasonable effort to advise HHSC at the time of delivery of Preexisting Material furnished under this Agreement, of all known or potential infringements of publicity, privacy or of intellectual property contained therein and of any portion of such document which was not produced in the performance of this Agreement. CONTRACTOR agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. HHSC shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by CONTRACTOR with respect to any Preexisting Material delivered under this Agreement. HHSC shall have the right to modify or remove any restrictive markings placed upon the Preexisting Material by CONTRACTOR. CONTRACTOR shall seek permission 30 days in advance before HHSC is used a reference site for contractor's products/services or in any publicity contractor does. CONTRACTOR shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the HHSC to CONTRACTOR. The HHSC hereby grants CONTRACTOR a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to non-confidential Deliverables first originated and prepared by the CONTRACTOR for delivery to the HHSC.

25) License Rights: All licenses granted to either party include the right to make, have made, use, have used, import, offer to sell, sell, lease or otherwise transfer any apparatus, or practice and have practiced any method and shall include the right to grant, directly or indirectly, revocable or irrevocable sublicenses to affiliates of such party; and nothing contained in this Agreement shall be deemed to grant any license under any other patents or patent applications arising out of any other inventions of either party.

26) Default: If the prescribed acceptance testing stated in the Solicitation Documents is not completed successfully, the HHSC may request substitute Software, cancel the portion of the Agreement that relates to the unaccepted Software, or continue the acceptance testing with or without the assistance of CONTRACTOR. These options shall remain in effect until such time as the testing is successful or the expiration of any time specified for completion of the testing. If the testing is not completed after exercise of any of the HHSC's options, the HHSC may cancel any portion of the Agreement related to the failed Software and take action to procure substitute software. If the failed software (or the substituted software) is an integral and critical part of the proper completion of the work for which the Deliverables identified in the solicitation documents or Statement of work were acquired, the HHSC may terminate the entire Agreement pursuant to the Default terms in the General Terms and Conditions.

27) Limitation of Liability for Software Deliverables:

a) Where equipment is under the HHSC's exclusive management and control, CONTRACTOR shall not be liable for any damages caused by the HHSC's failure to fulfill any HHSC responsibilities including, without limitation, those relating to assuring the proper use, management and supervision of the equipment and programs, audit controls, operating methods, office procedures or for establishing all property checkpoints necessary for the HHSC's intended use of the machines.

b) The CONTRACTOR's liability for damages to the HHSC for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall not exceed two times the value of the Agreement, but in no event shall the liability for damages be less than the total value of the Agreement.

c) WITH THE EXCEPTIONS OF INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT ACTIONS, THE HHSC'S CONSTITUTIONAL RIGHTS AS A SOVERIGN, AND PENALTIES IMPOSED UPON THE HHSC BY ANY FEDERAL ENTITY OR EXPENDITURES OF PUBLIC FUNDS REQUIRED OR RESULTING FROM AN OPERATIONAL FAILURE OF THE DELIVERABLE(S) OR SERVICES PROVIDED HEREUNDER, BUT NOTWITHSTANDING ANY OTHER TERM TO THE CONTRARY CONTAINED IN THIS AGREEMENT, NEITHER PARTY NOR THEIR RESPECTIVE AFFILIATES SHALL, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES (I) FOR ANY CLAIM BASED UPON ANY THIRD PARTY CLAIM, (II) FOR ANY CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST SAVINGS OR OTHER ECONOMIC CONSEQUENTIAL DAMAGES, WHETHER RESULTING FROM DELAYS, LOSS OF DATA, INTERRUPTION OF SERVICE OR OTHERWISE, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (III) FOR ANY PUNITIVE OR EXEMPLARY DAMAGES OF ANY NATURE WHATSOEVER.

28) Qualified Personnel: Each party shall provide sufficient, qualified, knowledgeable personnel capable of:

- (i) performing obligations set forth in this Agreement and each SOW;
 - (ii) making timely decisions necessary to move the Services forward;
 - (iii) participating in the project and assisting CONTRACTOR in rendering the Services; and
 - (iv) facilitating development, testing and implementation of CONTRACTOR software, if applicable.
- CONTRACTOR warrants that qualified personnel will perform the services in a professional manner. As used in this Paragraph, "professional manner" means that the personnel performing the services will be of a skill and competence consistent with prevailing norms of company providers in the information technology industry.

29) HHSC Obligations: CONTRACTOR shall not be responsible for any alleged breach of the foregoing Paragraph 28) that is attributable to (i) misuse or modification of CONTRACTOR's Software by or on behalf of the HHSC, (ii) the HHSC's failure to use corrections or enhancements made available by CONTRACTOR, (iii) the quality or integrity of data from other automated or manual systems with which the CONTRACTOR's Software interfaces, (iv) errors in or changes to third party software or hardware implemented by the HHSC or a third party that is not a subcontractor of CONTRACTOR or that is not supported by the Deliverables, or (vi) the operation or use of the CONTRACTOR's Software not in accordance with the operating procedures developed for the CONTRACTOR's Software or otherwise in a manner not contemplated by this Agreement.

30) Transportation: Transportation of software shall be FOB Destination unless delivered by internet or file transfer as agreed by the HHSC, or otherwise specified in the solicitation documents.

HAWAII HEALTH SYSTEMS CORPORATION GENERAL CONDITIONS
(103D Goods and Non-Healthcare Services)

TABLE OF CONTENTS

PAGE

1. <u>COORDINATION OF SERVICES BY HHSC</u>	2
2. <u>RELATIONSHIP OF PARTIES; INDEPENDENT CONTRACTOR STATUS AND RESPONSIBILITIES,</u> <u>INCLUDING TAX RESPONSIBILITIES</u>	2

3.	<u>PERSONNEL REQUIREMENTS</u>	2
4.	<u>CONTRACTOR EXCLUSION FROM FEDERAL PROGRAMS</u>	2
5.	<u>NONDISCRIMINATION</u>	2
6.	<u>CONFLICTS OF INTEREST</u>	2
7.	<u>SUBCONTRACTS AND ASSIGNMENTS; CHANGE OF NAME</u>	2
8.	<u>INDEMNIFICATION AND DEFENSE</u>	3
9.	<u>LIQUIDATED DAMAGES</u>	3
10.	<u>SUSPENSION OF AGREEMENT</u>	3
11.	<u>TERMINATION FOR DEFAULT</u>	3
12.	<u>TERMINATION FOR CONVENIENCE BY HHSC</u>	4
13.	<u>CHANGE ORDERS TO GOODS AND SERVICES AGREEMENTS</u>	5
14.	<u>MODIFICATIONS OF AGREEMENT</u>	5
15.	<u>VARIATIONS IN QUANTITY FOR DEFINITE QUANTITY AGREEMENTS</u>	6
16.	<u>VARIATIONS IN QUANTITY FOR INDEFINITE QUANTITY AGREEMENTS</u>	6
17.	<u>PRICE ADJUSTMENT</u>	6
18.	<u>CLAIMS BASED ON THE HEAD OF THE PURCHASING AGENCY'S ACTIONS OR OMISSIONS</u>	6
19.	<u>COSTS AND EXPENSES</u>	7
20.	<u>PAYMENT PROCEDURES; FINAL PAYMENT; TAX CLEARANCE</u>	7
21.	<u>PROMPT PAYMENT OF SUBCONTRACTORS</u>	7
22.	<u>CONFIDENTIALITY OF MATERIAL</u>	7
23.	<u>CORPORATE COMPLIANCE PROGRAM</u>	8
24.	<u>BUSINESS ASSOCIATE ADDENDUM</u>	8
25.	<u>PUBLICITY</u>	8
26.	<u>OWNERSHIP RIGHTS AND COPYRIGHT</u>	8
27.	<u>INSURANCE</u>	8
28.	<u>LIENS AND WARRANTIES</u>	8
29.	<u>ACCESS TO BOOKS AND RECORDS AND AUDIT BY HHSC</u>	8
30.	<u>ANTITRUST CLAIMS</u>	9
31.	<u>GOVERNING LAW</u>	9
32.	<u>COMPLIANCE WITH LAWS</u>	9
33.	<u>CAMPAIGN CONTRIBUTIONS</u>	9
34.	<u>DISPUTES</u>	9
35.	<u>ENTIRE AGREEMENT</u>	9
36.	<u>COUNTERPARTS</u>	9

37. <u>SEVERABILITY</u>	9
38. <u>WAIVER</u>	9
39. <u>DISCOUNTS AND REBATES</u>	9
40. <u>ACCEPTANCE OF GOODS AND SERVICES</u>	9
41. <u>OBSOLETE PARTS/LONG TERM PARTS AVAILABILITY (GOODS AND EQUIPMENT ONLY)</u>	9
42. <u>ENTIRE AGREEMENT</u>	9

1. **COORDINATION OF SERVICES BY HHSC.** The “head of the purchasing agency,” (through the Technical Representative(s), or other designee), shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in this Agreement. The CONTRACTOR shall maintain communications with the head of the purchasing agency through the Technical Representative(s) or other designee at all stages of the CONTRACTOR’s work, and submit to the head of the purchasing agency for resolution any questions which may arise as to the performance of this Agreement. “Purchasing agency” as used in these General Conditions means and includes any HHSC region or facility which is authorized to enter into contracts for the procurement of goods and services. The term, “CONTRACTOR”, includes all employees, agents, subcontractors, and other entities and persons utilized by the CONTRACTOR to fulfill the obligations of this Agreement. It will be the responsibility of CONTRACTOR to ensure that those other persons and entities follow the terms of this Agreement.
2. **RELATIONSHIP OF PARTIES: INDEPENDENT CONTRACTOR STATUS AND RESPONSIBILITIES, INCLUDING TAX RESPONSIBILITIES.**
 - a. In the performance of services required under this Agreement, the CONTRACTOR is an “independent contractor,” with the authority and responsibility to control and direct the performance and details of the work and services required under this agreement; however, HHSC shall have a general right to inspect work in progress to determine whether, in HHSC’s opinion, the services are being performed by the CONTRACTOR in compliance with this Agreement. Unless otherwise provided by special condition, it is understood that HHSC does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with HHSC.
 - b. The CONTRACTOR and the CONTRACTOR’s employees and agents are not by reason of this Agreement, agents or employees of HHSC for any purpose, and the CONTRACTOR and the CONTRACTOR’s employees and agents shall not be entitled to claim or receive from the HHSC any vacation, sick leave, retirement, workers’ compensation, unemployment insurance, or other benefits provided to HHSC employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR’S performance under this Agreement. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR’S employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR’S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes and (iii) general excise taxes. Unless provided otherwise by agreement between the parties, the CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, Hawaii Revised Statutes (“HRS”), and shall comply with all requirements thereof.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR’S employees and agents that is or may be required by law, and for payment of all premiums, costs and other liabilities associated with securing the insurance coverage.
3. **PERSONNEL REQUIREMENTS.**
 - a. The CONTRACTOR shall secure, at the CONTRACTOR’s own expense, all personnel required to perform this Agreement.
 - b. The CONTRACTOR shall ensure that the CONTRACTOR’s employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Agreement, and that all applicable licensing and operating requirements imposed or required under federal, state or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied. Where the facility is accredited by The Joint Commission, CONTRACTOR agrees to meet any Joint Commission standards that are applicable to CONTRACTOR.
4. **CONTRACTOR EXCLUSION FROM FEDERAL PROGRAMS.** CONTRACTOR affirmatively states that it and none of its employees, agents or subcontractors performing services or providing goods pursuant to this Agreement are excluded from participation in federal health care programs, as defined in the Social Security Act (Section 1128 and 1128A), and other federal laws and regulations relating to health care. CONTRACTOR has an affirmative duty to verify the accuracy of this statement at least monthly and to inform HHSC in the event it is discovered that it is no longer true. HHSC reserves the right to verify that the above statements are true and to immediately cancel this Agreement in the event they are not true.
5. **NONDISCRIMINATION.** No person performing work under this Agreement, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law or regulation.
6. **CONFLICTS OF INTEREST.** The CONTRACTOR represents that neither the CONTRACTOR, nor any employees or agents of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR’s performance under this Agreement.

7. SUBCONTRACTS AND ASSIGNMENTS; CHANGE OF NAME.

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

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

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

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

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

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Agreement and
 - (2) The CONTRACTOR asserts a claim for such adjustment within thirty (30) days after the end of the period of performance stoppage provided that if the head of the purchasing agency decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
 - d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provisions of this Agreement.

11. TERMINATION FOR DEFAULT.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement, or any extension thereof, or otherwise fails to timely satisfy the Agreement provisions, or commits any other substantial breach of this Agreement, the head of the purchasing agency may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the head of the purchasing agency, such officer may terminate the CONTRACTOR's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the head of the purchasing agency may procure similar goods or services in a manner and upon the terms deemed appropriate. The CONTRACTOR shall continue performance of the Agreement to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods and services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Agreement and subject to any directions from the head of the purchasing agency, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the State or HHSC has an interest.
- c. Compensation. Payment for completed goods and services delivered and accepted by HHSC shall be at the price set forth in the Agreement. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the head of the purchasing agency. If the parties fail to agree, the head of the purchasing agency shall set an amount. HHSC may withhold from amounts due the CONTRACTOR such sums as the head of the purchasing agency deems to be necessary to protect HHSC against loss because of outstanding liens or claims and to reimburse HHSC for the excess costs expected to be incurred by HHSC in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and failure arises out of causes such as; acts of God; acts of a Public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Agreement. Upon request of the CONTRACTOR, the head of the purchasing agency shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Agreement, the delivery schedule shall be revised accordingly, subject to the rights of the HHSC under this Agreement. As used in this paragraph the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR's right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 11.d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 12.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Agreement.

12. TERMINATION FOR CONVENIENCE BY HHSC.

- a. Termination for convenience of goods and services agreements. Pursuant to applicable State law and regulations (including, but not limited to, HRS§ Chapter 103D and Hawaii Administrative Rules (HAR) Title 3, Chapter 125, Section 3-

125-21), the head of the purchasing agency may, when the interests of HHSC so require, terminate this Agreement in whole or in part, for the convenience of HHSC. HHSC shall give written notice of the termination to the CONTRACTOR specifying the part of the Agreement terminated and when such termination becomes effective. HHSC shall exercise its rights under this paragraph in good faith and only when circumstances subsequent to the signing of this Agreement are changed to the extent that continuation of the Agreement is not in the best interest of HHSC. Such termination shall not be arbitrary or capricious.

- b. CONTRACTOR's obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance. The head of the purchasing agency may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to HHSC. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

- c. Right to goods and work product. The head of the purchasing agency may require the CONTRACTOR to transfer title and deliver to HHSC in the manner and to the extent directed by the head of the purchasing agency:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Agreement; and
- (3) The CONTRACTOR shall, upon direction of the head of the purchasing agency, protect and preserve property in the possession of the CONTRACTOR in which the HHSC has an interest. If the head of the purchasing agency does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that HHSC has breached the Agreement by exercise of the termination for convenience provision.

- d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the head of the purchasing agency may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 12d(3) below.
- (2) The head of the purchasing agency and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Agreement price plus settlement costs reduced by payments previously made by HHSC, the proceeds of any sales of goods and manufacturing materials under subparagraph 12.c, and the Agreement price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 12.d.(2) the head of the purchasing agency shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 12.d.(2) shall not duplicate payments under this subparagraph for the following:

- (A) Contract prices for goods or services accepted under the Agreement;
- (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Agreement would have completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
- (C) Subject to the prior approval of the Procurement Officer, costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 12.b. Subcontractors shall be entitled to a markup of no more than ten per cent on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with subparagraph 12.d.(3)(B).
- (D) The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Agreement price reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 12.c.(3) and the Agreement price of performance not terminated.

- e. HAR Chapter 3-123. Costs claimed, agreed to, or established under subparagraphs 12.d.(2) and 12.d.(3) above shall be in accordance with HAR Chapter 3-123.

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

a. Changes Clause.

- (1) Generally. By written order, at any time, and without notice to any surety, the head of the purchasing agency may, unilaterally, order:

- (A) Changes in the work within the scope of the Agreement; and
- (B) Changes in the time of performance of the Agreement that do not alter the scope of the work of the Agreement.

- (2) Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this contract, an adjustment shall be made and the Agreement modified in writing accordingly.

- (A) Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the Price Adjustment Clause of this Agreement. Failure of the parties to agree to an adjustment in contract price shall be resolved in accordance with the Price Adjustment Clause.

- (B) Failure of the parties to agree to an adjustment in time shall not excuse the CONTRACTOR from proceeding with the contract as changed, provided that the head of the purchasing agency or designee, within fourteen days after the changed word commences, makes the provisional adjustments in time as the head of the purchasing agency deems reasonable.

The right of the CONTRACTOR to dispute the contract price or time required for performance or both shall not be waived by its performing the work, provided however, that it follows the written notice requirements for disputes and claims established by the Agreement.

- (3) Time period for claim. Except as may be provided otherwise by Section 103D-501(b), HRS, the CONTRACTOR must file a written claim disputing the contract price or time provided in a change order within ten days after receipt of a written change order, unless such period for filing is extended by the head of the purchasing agency in writing. The requirement for filing a timely written claim cannot be waived and shall be a condition precedent to the assertion of a claim.

- (4) Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if the claim is not received by the head of the purchasing agency prior to final payment under this Agreement.

- (5) Other claims not barred. In the absence of such a change order, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Agreement or for breach of contract.

14. MODIFICATIONS OF AGREEMENT.

- a. In writing. Any modification, alteration, amendment, change or extension of any term, provision or condition of this Agreement shall be made by written amendment to this Agreement and all appropriate adjustments signed by the CONTRACTOR and HHSC. Change orders shall be made in accordance with paragraph 13 herein. Notice to any surety is not required.

Modifications may include any one or more of the following:

- (1) Drawings, designs, or specifications, for the goods to be furnished;
- (2) Method of shipment or packing;
- (3) Place of delivery;
- (4) Description of services to be performed;
- (5) Time of performance (i. e., hours of the day, days of the week, etc.);
- (6) Place of performance of the services; or
- (7) Other provisions of the contract accomplished by mutual action of the parties to the contract.

- b. No oral modification. No oral modification, alteration, amendment, change or extension of any term, provision or condition of this Agreement shall be permitted or acknowledged.
 - c. Adjustment of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Agreement, an adjustment shall be made and this Agreement modified in writing accordingly. Any adjustment in price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Agreement or as negotiated.
 - d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Agreement and the claim are not made prior to final payment under this Agreement.
 - e. Other claims not barred. In the absence of a written modification to the Agreement, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Agreement or for breach of contract.
 - f. Head of purchasing agency approval. If this is a professional services agreement awarded pursuant to Section 103D-304, HRS, any modification, alteration, amendment, change or extension of any term, provision or extension of this Agreement which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) of the initial Agreement price must receive the prior approval of the head of the purchasing agency.
 - g. Sole source agreements. Amendments to sole source agreements that would change the original scope of the agreement may only be made with the approval of the head of the purchasing agency. Annual renewal of a sole source agreement for services shall not be submitted as an amendment.
15. **VARIATIONS IN QUANTITY FOR DEFINITE QUANTITY AGREEMENTS.** Upon the agreement of HHSC and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in the Agreement, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the head of the purchasing agency makes a written determination that such an increase will either be more economical than awarding another Agreement or that it would not be practical to award another agreement.
16. **VARIATIONS IN QUANTITY FOR INDEFINITE QUANTITY AGREEMENTS.** When an Agreement provides for indefinite goods and/or services the Agreement should state:
- a. The minimum quantity, if any, HHSC is obligated to order and the CONTRACTOR is to provide;
 - b. Whether there is a quantity that HHSC expects to order and how this quantity relates to any minimum or maximum quantities that may be ordered under the Agreement;
 - c. Any maximum quantity HHSC may order and the CONTRACTOR must provide; and
 - d. Whether HHSC is obligated to order its actual requirements under the Agreement, or in the case of a multiple award as defined in Section 3-122-145, HAR, that HHSC will order its actual requirements from the contractors under the multiple award subject to any minimum or maximum quantity stated.
17. **PRICE ADJUSTMENT.**
- a. Price adjustment. Any adjustment in the Agreement price pursuant to a provision in this Agreement shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance;
 - (2) By unit prices specified in the Agreement or subsequently agreed upon before commencement of the pertinent performance;
 - (3) By the costs attributable to the events or situations covered by the provision, plus appropriate profit or fee, all as specified in the Agreement or subsequently agreed upon before commencement of the pertinent performance;
 - (4) In such other manner as the parties may mutually agree upon before commencement of the pertinent performance; or
 - (5) In the absence of agreement between the parties, the adjustment shall be made pursuant to 103D-501(b)(5), HRS.
 - e. Submission of cost or pricing data. The CONTRACTOR shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 103D-312, HRS. The submission of any cost or pricing data shall be made for any price adjustment subject to the provisions of HAR subchapter 15, chapter 3-122. A fully executed change order or

other document permitting billing for the adjustment in price under any method listed in paragraph (a)(1) through (a)(4) shall be issued within ten days after agreement on the method of adjustment.

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

- a. Change in scope. If any action or omission on the part of the head of the purchasing agency (which term includes the designee of such officer) requiring performance changes within the scope of the Agreement constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages or an extension of time for completion, the CONTRACTOR shall continue with performance of the Agreement in compliance with the directions or orders of proper officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages or extension of time for completion, provided:
 - (1) Written notice required. The CONTRACTOR shall give written notice to the head of the purchasing agency:
 - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission; or
 - (B) Written thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
 - (C) Within such further time as may be allowed by the head of the purchasing agency in writing.
 - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages or an extension of time. The Head of the Purchasing Agency, upon receipt of such a notice, may rescind such action, remedy such omission or take such other steps as may be deemed advisable.
 - (3) Basis must be explained. The notice required by subparagraph 18a(1) must describe as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages or an extension of time may be remedies to which the CONTRACTOR is entitled; and
 - (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the head of the purchasing agency within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to HHSC, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however shall excuse the CONTRACTOR from compliance with any rules or laws precluding any State officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Agreement.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provisions of the Agreement and these General Conditions.

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

20. PAYMENT PROCEDURES.

- a. Original invoices required. All payments under this Agreement shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Agreement have been performed by the CONTRACTOR according to the Agreement.
- b. Payment only for work under contract. HHSC is not responsible to pay for work performed by CONTRACTOR or its subcontractors that is not in this Agreement and any amendments or change orders thereto. All CONTRACTORS must follow

paragraph 14, Modifications of Agreement or paragraph 13, Change Orders to Goods and Services Agreements and must have proper authorization before performing work outside the original Agreement.

21. PROMPT PAYMENT OF SUBCONTRACTORS.

- a. Generally. Any money paid to a CONTRACTOR shall be disbursed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes regarding payment.
- b. Final payment. Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- c. Penalty. The procurement officer or the CONTRACTOR, as applicable, will be subject to a penalty of one and one-half per cent per month upon outstanding amounts due that were not timely paid by the responsible party under the following conditions. Where a subcontractor has provided evidence to the CONTRACTOR of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request as described in paragraph (d), and:
 - (1) Has provided to the CONTRACTOR an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State, as provided in Section 103-32.1, HRS; or
 - (2) The following has occurred:
 - (A) A period of ninety days after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has elapsed without written notice of a claim given to CONTRACTOR and the surety, as provided for in Section 103D-324, HRS; and
 - (B) The subcontractor has provided to the CONTRACTOR, an acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two times the amount being retained or withheld by the CONTRACTOR; any other bond acceptable to the CONTRACTOR; or any other form of mutually acceptable collateral, then, all sums retained or withheld from a subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the procurement officer to the CONTRACTOR and subsequently, upon receipt from the procurement officer, by the CONTRACTOR to the subcontractor within the applicable time periods specified in paragraph (b) and Section 103-10, HRS. The penalty may be withheld from future payment due to the CONTRACTOR, if the CONTRACTOR was the responsible party. If a CONTRACTOR has violated paragraph (2) three or more times within two years of the first violation, the contractor shall be referred by the procurement officer to the contractors license board for action under Section 444-17(14), HRS.
- d. A properly documented final payment request from a subcontractor, as required by paragraph (c), shall include:
 - (1) Substantiation of the amounts requested;
 - (2) A certification by the subcontractor, to the best of the subcontractor's knowledge and belief, that:
 - (A) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;
 - (C) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the subcontract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and
 - (D) The payment request does not include any amount that the subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract; and
 - (3) The submission of documentation confirming that all other terms and conditions required under the subcontract agreement have been fully satisfied.

The procurement officer shall return any final payment request that is defective to the CONTRACTOR within seven days after receipt, with a statement identifying the defect.
- e. This section shall not be construed to impair the right of a CONTRACTOR or a subcontractor at any tier to negotiate and to include in their respective subcontracts provisions that provide for additional terms and conditions that are requested to be met before the subcontractor shall be entitled to receive final payment under paragraph (c); provided that any such payments withheld shall be withheld by the procurement officer.

22. CONFIDENTIALITY OF MATERIAL.

- a. All material given to or made available to the CONTRACTOR by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the HHSC. It is acknowledged and agreed that all of the trade secrets, business plans, marketing plans, know how, data, contracts, including this Agreement, documents, scientific and medical concepts, billing records, personnel records, medical records of any kind, and referral sources for existing or future services, products, operations, management, business, pricing, financial status, valuations, goals, strategies, objectives and agreements of HHSC and any of its facilities, affiliates or subsidiaries, and all patient information in any form, whether written, verbal or electronic are confidential ("Confidential Information"); provided, however, that Confidential Information, with the exception of patient information, shall not include information that is in the public domain.
- b. All information, data, or other material provided by the CONTRACTOR to the HHSC is subject to the Uniform Information Practices Act, chapter 92F, HRS, as modified by chapter 323F, HRS.
- 23. 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 HHSC. The CONTRACTOR understands and agrees that employees, agents, contractors and subcontractors performing any services at any of the HHSC facilities shall be fully subject to such Corporate Compliance Program, as may be amended from time to time, as well as all federal program requirements and applicable policies and procedures of HHSC and its facilities. The Corporate Compliance Program requires periodic training, including an orientation program, of all people who provide financial, business office, personnel, coding, medical records information systems and clinical services in the facility. The CONTRACTOR agrees to cause its employees, agents and contractors who provide financial, business office, personnel, coding, medical records information systems and/or clinical services at any of the HHSC facilities to review the posted orientation materials and participate in any compliance training programs HHSC may require.
- 24. BUSINESS ASSOCIATE ADDENDUM.** By signing this Agreement, CONTRACTOR acknowledges that CONTRACTOR may be a Business Associate of HHSC within the meaning of the federal privacy and security laws as stated in 45 C.F.R. Parts 160 and 164, Subparts A, C, and E. CONTRACTOR further acknowledges that CONTRACTOR has read the Business Associate Addendum, which is posted on the HHSC internet site (www.hhsc.org/BAA). If CONTRACTOR is a Business Associate as defined in the above laws, said Business Associate Addendum is hereby incorporated by reference and made a part of this Agreement as if fully repeated herein. By signing this Agreement, CONTRACTOR agrees to fully comply with, and be bound by, all terms set forth in the Business Associate Addendum, as it may be amended from time to time.
- 25. PUBLICITY.** The CONTRACTOR shall not refer to the HHSC or any office, agency, or officer thereof, or any HHSC employee, including the head of the purchasing agency, the Agency procurement officer, the HHSC Board of Directors, or to the services or goods, or both, provided under this Agreement, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR without the explicit written consent of HHSC. All media contacts with the CONTRACTOR about the subject matter of this Agreement shall be referred to the head of the purchasing agency.
- 26. OWNERSHIP RIGHTS AND COPYRIGHT.** HHSC shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled or conceived by the CONTRACTOR pursuant to this Agreement and all such material shall be considered "works for hire." All such materials shall be delivered to HHSC upon expiration or termination of this Agreement. HHSC, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled or conceived by the CONTRACTOR pursuant to this Agreement.
- 27. INSURANCE.** During the term of this Agreement, CONTRACTOR shall maintain at all times or cause to be maintained general and professional liability insurance coverage for CONTRACTOR and its employees rendering services to HHSC under this Agreement. The insurance policies shall be issued by a company or companies authorized to do business in Hawaii and approved by HHSC, with combined single limits of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence and THREE MILLION DOLLARS (\$3,000,000) in the aggregate, or such greater amount as may be required from time to time by HHSC. HHSC shall receive not less than thirty (30) days notice prior to any cancellation or material change or reduction in coverage. No such material change or reduction may be made without approval from HHSC. HHSC shall be listed as an additional insured on all policies. Prior to the commencement of this Agreement, CONTRACTOR shall provide HHSC with a certificate of insurance. Thereafter, prior to the expiration of each policy period, the insurance carriers for CONTRACTOR shall provide HHSC with certificates of insurance evidencing the foregoing coverage and provisions. HHSC reserves the right to request a certified copy of the policies. CONTRACTOR shall also carry workers' compensation insurance for CONTRACTOR'S employees in the amounts required by applicable law. Failure to maintain the necessary insurance in accordance with the provisions set forth herein shall constitute a material breach of this Agreement and HHSC shall thereafter have the option of pursuing remedies for such breach and/or immediate termination of this Agreement.
- 28. LIENS AND WARRANTIES.**
- a. Liens. All products provided under this Agreement shall be free of all liens and encumbrances.

- b. Warranties for products and services. In the event this Agreement is for the provision of products (goods or equipment), CONTRACTOR warrants that it has all rights, title and interest in and to all products sold, leased or licensed to HHSC. CONTRACTOR also warrants that the products shall substantially conform to all descriptions, specifications, statements of work and representations set forth in the Agreement, schedules, publications of CONTRACTOR and/or any order(s) and will be free from defects in materials, performance, workmanship and design. CONTRACTOR further warrants that it will perform any services required with promptness, diligence and in accordance with prevailing standards in the industry to the reasonable satisfaction of HHSC. The Warranty period shall commence after Acceptance, as defined in this Agreement. Any specific warranty periods shall be as set forth in the proposals, schedules, orders or Special Conditions pertaining to this Agreement but in any event such warranty period shall not be less than one (1) year.
29. ACCESS TO BOOKS AND RECORDS AND AUDIT BY HHSC. If the value or cost of Services rendered to HHSC pursuant to this Agreement is Ten Thousand Dollars (\$10,000.00) 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 paragraph 29.a above.
 - c. The availability of CONTRACTORS' books, documents and records shall be subject to all applicable legal requirements, including such criteria and procedures for obtaining access that may be promulgated by the Secretary. The provisions of paragraphs 29.a and 29.b shall survive the expiration or other termination of this Agreement regardless of the cause of such termination.
 - d. HHSC may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor or prospective subcontractor which are related to this Agreement. HHSC may utilize third-party agents to conduct an audit and/or analysis of CONTRACTOR'S records related to quotes, proposals, orders, invoices, sales reports, expenses charged to HHSC, sales reports, and discounts related to this Agreement and or proposed amendment to this Agreement. Any such agents will be bound by the same confidentiality clauses as stated in this Agreement.
30. ANTITRUST CLAIMS. HHSC and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to HHSC any and all claims for overcharges as to goods and materials purchased in connection with this Agreement, except as to overcharges which result from violations commencing after the price is established under this Agreement and which are not passed on to HHSC under an escalation clause.
31. GOVERNING LAW. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a State court of competent jurisdiction in Hawaii.
32. COMPLIANCE WITH LAWS. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Agreement. This specifically includes Sections 103-55 and 103-55.5, Hawaii Revised Statutes, dealing with wages, hours, and working conditions of employees of contractors providing services or construction. Other laws which may be applicable to contractors include, but are not limited to: HRS Chapters 383, 386, 387, 392, and 393. It shall be the responsibility of the CONTRACTOR to determine applicability and comply with the law.
33. CAMPAIGN CONTRIBUTIONS. CONTRACTOR acknowledges that it is unlawful under Section 11-355, Hawaii Revised Statutes, unless specifically permitted under that law, for CONTRACTOR at any time between the execution of this Agreement through the completion of the Agreement to: (a) directly or indirectly make any contribution or to promise expressly or impliedly to make any contribution to any political party, committee or candidate or to any person for any political purpose or use; or (b) knowingly solicit any such contribution from any person for any purpose during any period.
34. DISPUTES. Disputes shall be resolved in accordance with Section 103D-703, HRS and Chapter 3-126, Hawaii Administrative Rules.
35. ACCESS TO HHSC NETWORK AND SYSTEMS. CONTRACTOR may be given access to some of the HHSC computer network and systems in order to fulfill the terms of the Agreement. CONTRACTOR agrees to follow and to require all agents, employees, and subcontractors to also follow the Information Technology and Confidentiality policies summarized and posted on the HHSC Procurement internet site (www.hhsc.org/GC) and to comply with such other instructions as provided by HHSC in the use of HHSC

computer systems. CONTRACTOR shall not use the HHSC systems or data for any purpose other than to fulfill its duties under this Agreement.

36. **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.
37. **SEVERABILITY.** In the event that any provision of this Agreement is declared invalid or unenforceable by a court, such invalidity or non-enforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.
38. **WAIVER.** The failure of HHSC to insist upon strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of HHSC's right to enforce the same in accordance with this Agreement. The fact that HHSC specifically refers to one provision of the law, and does not include other provisions shall not constitute a waiver or relinquishment of HHSC's rights or the CONTRACTOR's obligations under the law.
39. **DISCOUNTS AND REBATES.** CONTRACTOR hereby acknowledges its obligations to comply with any and all requirements imposed upon it as a seller under 42 U.S.C. Sec. 1320a-7b(3)(A) and 42 C.F.R. Sec. 1001.952(h) Discounts.
40. **ACCEPTANCE OF GOODS AND SERVICES.** HHSC shall accept goods and services or give CONTRACTOR notice of rejection within a reasonable time, notwithstanding any payment, prior test, or inspection. No inspection, test, delay or failure to inspect or test, or failure to discover any defect or other nonconformance with the specifications, shall relieve CONTRACTOR of any obligations under this Agreement or impair any rights or remedies of HHSC.
41. **OBSOLETE PARTS/LONGTERM PARTS AVAILABILITY (Goods and Equipment Agreements Only).** Contractor shall timely report on the status of end of life (EOL) hardware that has been procured for the purchased or leased product. EOL hardware includes the following: electronic components/piece parts and mechanical hardware. Contractor shall provide advanced notification in writing to the HHSC Technical Representative of any changes to tooling, facilities, materials, availability of parts, or processes that could affect the contracted product. This includes but is not limited to fabrication, assembly, handling, inspection, acceptance, testing, facility relocation, or introduction of a new manufacturer. Contractor shall notify HHSC of any pending or contemplated future action to discontinue articles purchased or replacement parts for the articles purchased pursuant to this Agreement and shall work with HHSC to determine the need to stockpile any parts for the likely life of the product and offer those parts to HHSC prior to the actual discontinuance. Contractor shall extend opportunities to HHSC to place last time buys of such articles with deliveries not to exceed twelve months after the last time buy date.
42. **ENTIRE AGREEMENT.** This Agreement sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between HHSC and the CONTRACTOR relative to this Agreement. This Agreement supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between HHSC and the CONTRACTOR other than as set forth or as referred to herein.

END OF GENERAL CONDITIONS