**HAWAII HEALTH SYSTEMS CORPORATION**

**REQUEST FOR PROPOSALS**

KAUAI REGION FY 18-02

**HEALTH INFORMATION SYSTEM (HIS) & ELECTRONIC MEDICAL RECORDS SYSTEM (EMR)**

FOR

Kauai Veterans Memorial Hospital

West Kauai Clinics

4643 Waimea Canyon Drive, P.O. Box 337

Waimea, Hi 96796

AND

Samuel Mahelona Memorial Hospital

4800 Kawaihau Road

Kapaa, Hi 96746

AN AGENCY OF THE STATE OF HAWAII

Due Date for Proposals in response to this Solicitation:

**December 29, 2017; 2:00 PM, HST**

**TABLE OF CONTENTS**

 Page No

SECTION 1: GENERAL NOTICE 3

SECTION 2: SCOPE OF SERVICES 5

SECTION 3: PROPOSALS 12

SECTION 4: PRICING SCHEDULE & COMPENSATION 25

SECTION 5: EVALUATIONS 26

SECTION 6: AWARD OF CONTRACT 29

APPENDIX A: TRANSMITTAL COVER LETTER FORM 31

APPENDIX B: PROPOSAL SUBMISSION CHECKLIST 32

APPENDIX C: HAWAII COMPLIANCE EXPRESS INSTRUCTIONS 33

APPENDIX D: SAMPLE CONTRACT 35

APPENDIX E: HHSC INFORMATION TECHNOLOGY SPECIAL TERMS AND CONDITIONS FOR SOFTWARE AND SERVICES 44

APPENDIX F: PRICE PROPOSAL 56

APPENDIX G: ATTESTATION OF CONTRACTURAL RELATIONSHIP 60

APPENDIX H: FUNCTIONAL REQUIREMENTS CHECKLIST 61

**SECTION ONE**

**GENERAL NOTICE**

* 1. **INTRODUCTION**

The Hawaii Health Systems Corporation (HHSC), Kauai Region (the “Kauai Region”) is issuing this Request for Proposals (RFP) for a Practice Management and Electronic Medical Record system for its Clinics as well as a Health Information System and Electronic Medical Record system for Kauai Veterans Memorial Hospital (KVMH) and Samuel Mahelona Memorial Hospital (SMMH).

**1.2 PROCUREMENT TIMETABLE**

The timetable set out herein represents Kauai Region’s best estimate of the schedule that will be followed in the RFP process. If an activity of the timetable, such as “Closing Date for Receipt of Proposals” is delayed, the rest of the timetable dates may be extended by the same number of days. Applicants, referred to hereinafter as “Offeror” or “Offerors” as the case may be, will be advised, by written addendum to the RFP, of any changes to the timetable.

**Activity Scheduled Date**

RFP Announcement November 15, 2017

Submission Deadline for Questions & Clarification Requests November 30, 2017

Kauai Region’s Response to Questions & Clarifications December 13, 2017

Closing Date for Receipt of Proposals December 29, 2017

Offer Selection/Award Notification (on/about) January 30, 2018

Anticipated Contract Commencement Date March 1, 2018

**1.3 SUBMISSION OF QUESTIONS AND CLARIFICATION REQUESTS**

Offerors are encouraged to submit written questions and requests for clarifications pertaining to the RFP. To obtain an official answer from the Kauai Region, questions must be submitted in writing via electronic mail, to the Issuing Officer no later than the “Submission Deadline for Questions & Clarification Requests”, identified in the timeline above.

Offerors may request changes and/or propose alternate wording to the attached “General Terms and Conditions” during this phase only, all such requests shall be reviewed by the HHSC Legal Department. No requests to change the General 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 the Kauai Region and shall be recorded as addenda to the RFP. The only official position of the Kauai Region 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.

Offerors must also request, in writing, during this phase only, permission to use any Contractor agreements in addition to the Sample Agreement included in Exhibit D. The proposed Contractor agreement must be submitted for legal review by HHSC. It is important to note that as a state Agency, the Kauai Region cannot indemnify any Offeror. Proposed Contractor agreements must either delete any reference to indemnification.

No requests to change the General Terms and Conditions or use an alternative agreement (e.g., agreement from an Offeror) will be entertained after the proposals have been submitted or during the contracting process.

The “Issuing Officer” is

Cora Shirai, Contract Manager

Phone No.: (808) 338-9454

Email: cshirai@hhsc.org

**1.4 RFP AMENDMENTS**

Kauai Region reserves the right to amend the RFP any time prior to the “Proposal Submission Deadline” identified above. Any changes beyond that time must be mutually agreed to by all respondents and Kauai Region.

**1.5 CANCELLATION TO RFP**

The RFP may be canceled by the Kauai Region if it is determined to be in the best interests of the Kauai Region and HHSC.

**1.6 PROTESTS**

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 not later than the “Proposal Submission Deadline” identified above.

A protest of an award or proposed award shall be submitted within five (5) working days after the posting of the award or the proposed award of the contract.

Any and all protests shall be submitted in writing to the Kauai Region’s CEO as follows:

Peter Klune

RCEO – Kauai Region

Kauai Veterans Memorial Hospital/WKC

Samuel Mahelona Memorial Hospital

4643 Waimea Canyon Drive

P.O. Box 337

Waimea, HI 96796

**SECTION TWO**

**SCOPE OF SERVICES**

**2.1 INTRODUCTION**

The Kauai Region has identified as a strategic goal to embark upon a clinical and business transformation initiative, utilizing the latest health information technology available, that seeks to accomplish the following goals for the entire organization:

* To transform care delivery and create a culture of excellence in the Kauai Region through the use of an Electronic Medical Record (EMR) system.
* To utilize cutting edge technology to automate clinical, financial, and other operational processes that are currently cumbersome and sub-optimized.
* To allow for a substantial degree of standardization of data dictionaries and operational procedures with an eye toward leveraging best practices in the Kauai Region and allowing for effective benchmarking and management controls.
* To positively impact both the quality and administrative aspects of the organization and allow fast and efficient review of clinical data at times and locations that are convenient to the provider, thereby providing the ultimate in quality and safe care for the client.
* To reduce costs and increase revenue by improving the efficiency and operations of the Kauai Region.
* To be able to demonstrate “meaningful use” of health information technology in a manner consistent with the ARRA/HITECH legislation that will allow the Kauai Region to realize economic incentives and avoid financial penalties.
* To be able to integrate medical devices to capture data directly to the EMR system (such as patient monitors, fetal monitors) accurately and reduce human errors in data recording.

The Offeror awarded the contract (the “Contractor”) shall provide Health Information System (HIS), Practice Management EMR services pursuant to provisions of the Scope of Services, as described below.

* Streamline the charting and assessment process, improve care planning, reduce administrative work, and improve information quality and access.
* Allow electronic charting, care planning, user defined assessments, physician orders, progress notes, Minimum Data Set (MDS), Admission / Discharge / Transfer module, and Decision Support System (e.g., analytics, graphical dashboards for key performance metrics, and customizable reports).
* Capable of allowing in- patient and long-term care, out-patient, physician billing, ambulatory billing, provider based billing and method II billing.
* Capable of allowing HIM coding for all types of patients, i.e., in-patient, out-patient, long-term care, ambulatory, same day surgery.
* Provide Quality Management System.
* Include operating system/applications and system upgrades.
* Implement to go-live, which shall include training, and support (on-site or web based). Training and support shall include but not be limited to clinical, financial, IT, go-live and post go-live.
* Generate reports. Examples include:

|  |  |
| --- | --- |
|          ADT Report |          Patient Seen and Disposition Decision Report |
|          Admitting Physician Report |          PASRR |
|          Behavior, Psychotropic Meds |          Psychoactive/anticoagulant/diuretic |
|          Census Report |  Medication list |
|          Assessment Report |          Readmission tracker |
|          Clinical Notes Report |          Restraints |
|          Daily Order Report |          RUGS IV Categories List |
|          Falls Report |          Skin information |
|          Feeding Tubes / Parenteral Info |          Charge Batch Report |
|          HIPPS Billing Code |          Weight Diet and Dental  |
|          IDT care plan review |          CPOE Verbal Reports |
|          Infection Risk Report |          Medication List |
|          Influenza / PPV Vaccines |          MAR |
|          Tracking Board Report |          Financial Statements |
|          ED Patient Log |          Budget and Actual by Departments |
|          MDS CMI Averages |          Aging for AP/AR |
|          MDS CMI List |          Trial Balance |
|          MDS Resident List |          Budget actual variance report |
|          MDS with Errors |          Work list – billing denials/claim errors |
|          ED Location Utilization Report |          Service Catalog/CDM Report |
|          ED Timeline Report |          Dashboard Report |
|          Pain Assessment Report |          Inventory Report |
|          Belongings Report |          DNFB Report |
|          Schedule Report |          Denials Report |
|          Number of visits |          Unbilled accounts |
|          Detail charges |          Cancelled appointments |
|          A/R |  |

* System support for auxiliary and other facility operations such as: Physical Therapy (PT), Occupational Therapy (OT), Speech Therapy (SP), Recreational Therapy (RT), Social Work (SW), Physician Services, Long-Term Care (LTC), Pharmacy, Dietary, Laboratory, X-Ray, Wound Management, Inventory Management and Health Information Exchange (HIE) capability.

Minimum Requirements

The Contractor shall meet the following minimum requirements:

* Integrated System
* Remote Hosted
* CMS Certified\Meaningful Use
* Certified EMR
* ADT/Registration/Patient Access
* Remote hosted and ASP
* Patient/Physician Web Portal
* LAN/WAN
* Health Information Management (HIM)
* Clinic record
* Coding or interface capability
* Order Management (Including CPOE)
* Interdisciplinary Clinical Documentation (physician, nurse, ancillary)
* Pharmacy/Medication Management
* Electronic Prescribing
* Scheduling
* Surgery/OR
* Emergency Department
* Long Term Care/MDS
* Practice Management/Ambulatory
* Single Data Repository (clinical and financial)
* Patient Accounting (including payor contracts management)
* Hospital Billing
* Professional Billing, Provider Based Billing, Method II Billing
* Electronic claims
* Medical device interfacing/integration

**2.2 CONTRACT PERIOD**

The purpose of this competitive RFP is to award a single, fixed price Agreement for Offeror to implement the HIS EMR. The term of the contract shall be for no less than seven (7) years, but no more than ten (10) years.

**2.3 TECHNICAL REPRESENTATIVE**

Technical Representatives have the right to oversee the successful completion of contract requirements, including monitoring, coordinating and assessing Contractor performance; placing requests for services; and, approving completed work/services with verification of same for Contractor’s invoices. Technical Representatives will also serve as points of contact for “technical” matters throughout the term of the contract. The Technical Representative is:

Donna Dertz, Organizational Development Officer / Regional HR Director

4643 Waimea Canyon Drive

Waimea, HI 96796

(808) 338-9436

**2.4 INTENT/GENERAL INFORMATION**

Kauai Region Facility Information

The 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. The RFP is only for one region which is known as the Kauai Region. The Kauai Region is comprised of two Critical Access Hospital (“CAH”) facilities (KVMH and SMMH) and four outpatient clinics (Waimea Clinic, Port Allen Clinic, Kalaheo Clinic, and Poipu Clinic).

KVMH

KVMH, is a CAH facility with a med/surg unit, ICU unit, emergency room, surgery, LTC, and birthing center. It also provides various outpatient services such as Radiology, PT, OT, RT, and Laboratory.

SMMH

SMMH, a CAH facility with (66) dually certified ICF and SNF beds, (5) acute beds (CAH), and (9) psychiatric beds, and (3) emergency room beds. It also provides outpatient services such as PT, OT and Radiology.

West Kauai Clinics (Waimea, Port Allen, Kalaheo, Poipu)

The West Kauai Clinics consist of Waimea Clinic, Port Allen Clinic, Kalaheo Clinic and The Clinic at Poipu. The clinics had 31,657 patient visits in year 2016. Combined, there are 16 providers (physicians and nurse practitioners) with the following specialties:

 Family Practice

 General Surgery

 OB/GYN

 Pediatrics

 Internal Medicine

The Kauai Region is seeking proposals to propose a solution in response to this RFP. The Kauai Region is interested in the following major application areas:

* ADT/Registration/Patient Access
* Health Information Management (HIM)
* Order Management (Including CPOE)
* Interdisciplinary Clinical Documentation (physician, nurse, ancillary)
* Pharmacy/Medication Management
* Enterprise Scheduling
* Surgery/OR/Anesthesia
* Emergency Department
* Long Term Care
* Practice Management
* Ambulatory System (Clinic)
* Revenue Management System (payor contracts, denials, hospital and clinic billing, professional billing, method II billing, provider based billing)
* Financial System (GL, AP, MM)
* Behavioral health
* Radiology system
* CCU/ICU system
* Baby/Women’s Health (OB/Gyn

**2.4.1** Offeror’s proposal must be based on the currently supported production version of its software. If future enhancements are planned to meet the functionalities required herein, Offeror shall specify the release date the Offeror shall make the planned enhancement available for release into productive use. Failure of Offeror to expressly set forth the dates when use functionality shall be available may, in the Kauai Regions sole and absolute discretion, render Offeror’s proposal nonresponsive.

**2.4.2** The Kauai Region reserves the right to unbundle Offeror’s proposed solutions including, but not limited to, obtaining hardware and/or support for that hardware from a third party, selecting a subset of the proposed applications, integrating with other solution providers to achieve the desired functionality, and obtaining implementation and training services from other providers.

**2.4.3** Offerors must document which of their proposed application components cannot be unbundled and explain why.

**2.4.4** If Offeror’s response is conditional, an explanation of the conditions must be provided. Failure to provide such explanations may, in the Kauai Regions sole and absolute discretion, render Offeror’s proposal nonresponsive.

**2.4.5** The requirements of this RFP are intended for the Kauai Region exclusively, and should not be construed or proposed for HHSC or any of its other regions.

**2.4.6** Offeror’s proposals are irrevocable for a period of 180 days from the date and time Offeror submits its response to this RFP.

**2.4.7** The term of the Agreement shall be negotiated based upon the information presented in the successful Offeror’s proposal and the Kauai Region’s project requirement team.

**2.4.8** To ensure uniformity, Offerors shall use the response format found in Section 3.5 – Proposal Information.

**2.5** MANDATORY REQUIREMENTS

The following are the Mandatory Requirements of the HIS/EMR:

1. Full EMR suite for Acute, CAH, ambulatory and LTC providers, preferably integrated but at a minimum offered through a partner. Offeror is responsible for the support of the EMR suite and must already have a demonstrated contractual relationship with partner. Please refer to Appendix H.
2. In the event that functional areas required in this RFP are not covered in Offeror’s most current release, the Agreement shall include provisions whereby Offeror shall expressly commit to include the missing functionality by a date certain in a future release in a manner deemed satisfactory by the Kauai Region in its sole and absolute discretion.
3. A fully integrated (with EMR and the rest of the suite) revenue cycle solution. Revenue cycle is defined as supporting at a minimum: scheduling, physician reporting, registration, HIM, billing, denials and follow up, posting.

1. Offeror shall work with the Kauai Region facilities from the commencement of the Agreement through the entire implementation process and successful completion of the entirety of the Scope of Services.
2. Offeror shall provide documention evidencing three (3) full installations with EMR and Revenue cycle within the past two (2) years and shall include the name and contact information of a reference at each installation site identified in Offeror’s response.
3. By submitting its response, Offeror is commiting to commence implementation within one (1) month of the Kauai Region’s execution of the contract.

**2.5.1** HIGHLY DESIRED REQUIREMENTS

The following are highly desired requirements and design principles for the Kauai Region HIS/EMR:

1. The system selected shall be as integrated across as many functional areas as possible.
2. Offer shall have Office of the National Coordinator (ONC) Certification for the software being proposed. If the software does not already have ONC certification, Offeror must obtain Meaningful Use Certification from the ONC for the version being offered to the Kauai Region prior to its executing the contract. If Offeror fails to obtain such certification, Offeror shall be required to obtain a performance bond in an amount to be determined by the Kauai Region prior to executing the Agreement. Failure to obtain the certification or the performance bond will disqualify Offeror.
3. The majority of end-user train the trainer training shall be held on-site at the Facility where the work is being performed. Actual training methods and times shall be included in the Agreement.

**2.5.2** IMPLEMENTATION MODEL

The Kauai Region “preferred” implementation model is as follows: first West Kauai Clinics, second KVMH, and third, SMMH.

**2.5.3** EXISTING SYSTEMS TO BE REPLACED

The Kauai Region HIS/EMR will replace the existing systems listed below that are currently in production:

Sorian Clinicals

Sorian Financials

Surgical Info System (SIS)

Syngo Radiology System

ADL-MDS System

ConnxtMD (Clinic Registration/Scheduling/Billing)

**SECTION THREE**

**PROPOSALS**

**3.1 PROPOSAL PREPARATION**

Offerors shall prepare a written proposal in accordance with requirements stated herein and provide the proposal to the individual at the address indicated below.

Additionally, proposals shall include and address, at a minimum:

* The information identified below in Section 3.5;
* The pricing information identified below in Section 4.0;
* Proposal Transmittal Cover Sheet, Appendix A;
* Proposal submittal Checklist, Appendix B;
* Certificate of Compliance from the Hawaii State Department of Labor and Industrial Relations; and
* Certificate of Good Standing from the Department of Commerce and Consumer Affairs Business Registration Division

Offeror’s proposal shall be firm and irrevocable for 180 days from the “Proposal Submission Deadline”. Offerors shall submit all required information specified above to qualify for evaluation and consideration for award.

**3.2 DISQUALIFICATION OF PROPOSALS**

The Kauai Region 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. Any proposal offering any other set of terms and conditions contradictory to those included in the RFP may be disqualified without further notice at the sole and absolute discretion of the Kauai Retion. Kauai Region reserves the right to ask for clarification of any item in the proposal.

**3.3 ELECTRONIC DOCUMENTS**

The Kauai Region may provide an electronic version of this procurement document. Any unidentified alteration or modification to the original document (or to any Exhibit contained therein) issued by the Kauai Region shall be ineffective and subject the Offeror to disqualification if any such alterations or modifications are not identified within the document at the time of submission of Offeror’s proposal. In those instances where modifications are identified, the Kauai Region may, in its sole and absolute discretion consider the modification and unless agreed to in writing, the original documents issued by the Kauai Region shall take govern.

**3.4 SUBMISSION OF PROPOSALS**

Each Offeror shall deliver one (1) original, four (4) copies of its proposal, and one (1) electronic copy contained on a compact disc or USB Flash drive, **no later than 2:00 PM, HST, on the “Proposal Submission Deadline**” identified in Section 1. Proposals received after this time/date will not be considered and will be returned to the applicant. The original shall be clearly marked “ORIGINAL” and copies shall be clearly marked “COPY”. Deliver proposals no later than the Proposal Submission Deadline to the following address:

Cora Shirai, Contract Manager

4643 Waimea Canyon Drive, P.O. Box 337

Waimea, HI 96796

cshirai@hhsc.org

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

**“Proposal submitted in response to: RFP FY18-02”**

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

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

All proposals and other material submitted by Offerors become the property of the Kauai Region and may be returned only at the Kauai Region’s option.

**3.5 PROPOSAL INFORMATION**

Offerors are hereby notified that evidence of the authority of the person(s) signing the offer document is required to be included with the offer documents. Failure to comply with this requirement will be cause for rejection of an offer as being non-responsive.

Each Offeror shall submit its proposal with the required number of copies in the format as contained in the RFP. The material shall be in sequence and related to the RFP. The Kauai Region will not provide any reimbursement for the cost of developing or presenting proposals in response to this RFP. Failure to include the requested information may have a negative impact on the evaluation of the Offeror’s proposal. The proposal should include at least the following information:

**3.5.1** TABLE OF CONTENTS

To ensure that each Offeror’s proposal is reviewed on a consistent and thorough basis, Offerors shall use the following outline:

|  |  |
| --- | --- |
| Tab | Contents |
| A | Table of Contents |
| B | Executive Summary |
| C | Functional Requirements |
| D | Future Capability |
| E | Technical Requirements |
| F | Implementation Approach and Training Offerings |
| G | Cost Schedule |

3.5.1.1 Each submitted proposal must comply with the following format requirements:

* The proposal must be submitted in the format described in this Section and must be typed.
* The documents contained in the response must follow the above indicated tabs.
* Additional documents submitted by the Offeror must be cross-referenced to the question(s) or section(s) that the document is intended to address.
* Original signatures in ink are required; facsimile or rubber stamp signatures will not be accepted.

The Table of Contents to this Section shall be placed behind Tab A –Table of Contents of Offeror’s proposal.

**3.5.2** EXECUTIVE SUMMARY

The executive summary should present an overview of all major points detailed in the proposal and should be written in a manner easily reviewed by the Kauai Region. The executive summary should contain the following information:

* Brief summary of the proposal in non-technical terms
* Overall scope of the proposed system(s) and services
* Summary of available and in-development applicable product lines
* Key differentiating points for your proposed solution

The Table of Contents to this Section shall be placed behind Tab B – Executive Summary of Offeror’s proposal.

**3.5.3** FUNCTIONAL REQUIREMENTS CHECKLIST

This Section of the proposal should contain Offeror’s responses to specific questions on the functions and features provided by its system. This portion of the RFP requires Offeror to complete a functional requirements checklist (Appendix H) that addresses the following key application areas:

* Enterprise Master Patient Index (EMPI)
* ADT/Registration
* Health Information Management (HIM)
* Order Management
* Medication Management/Pharmacy
* Interdisciplinary Clinical Documentation (physician, nurse, ancillary)
* Physician/CPOE
* Results
* Enterprise Scheduling
* Surgery/OR/Anesthesia
* Emergency Department
* Long Term Care
* Home Health
* Practice Management
* Ambulatory System
* Management Reporting
* Decision Support
* QA/UM/RM
* Behavioral Health
* Baby/Women’s Health

The Functional Requirements Checklist (Appendix H) provides a list of general and specific features and functions required by the Kauai Region. The Kauai Regionis looking for Offeror’sability to meet the requirements in the Inpatient, Outpatient (i.e., hospital-based outpatient services, one-day surgery, therapies, and treatments), LTC, Home Health and Clinical/Physician office settings.

Offeror’s response to this Section shall be placed behind Tab C – Functional Requirements of Offeror’s proposal.

**3.5.4** FUTURE CAPABILITY

In this Section of the RFP, the Kauai Region is interested in knowing where Offeror is investing its funds in terms of research and development (R&D) (i.e., new product development vs. enhancements to its existing product offerings). To the extent possible, please breakout R&D spending by product offering and describe any new or enhanced functionality Offeror is planning on providing in the future based on its R&D spending.

Offeror’s response to this Section shall be placed behind Tab D – Future Capability of Offeror’s proposal.

**3.5.5** TECHNICAL REQUIREMENTS

This Section of the RFP will be used to measure how well Offeror’s technology solution is able to support the functional components to be provided by its proposed solution. Where questions are asked, all questions must be answered. Any questions that are not answered will be deemed to be negative responses. The Technical Requirements Section is organized as follows:

* Proposed Solution Offering(s)
* General Architecture
* System Processing/Environment
* System Development Methodology
* Database and Reporting
* Integration
* Performance
* Service and Support
* System Documentation
* Other Information
* Remote Host

Offeror’s response to this Section shall be placed behind Tab E – Technical Requirements of Offeror’s proposal.

3.5.5.1 Proposed Solution Offering(s)

Please complete this Section by providing a complete list of Offeror’s proposed solution offering(s). For each application/module, please denote one of the following values:

* A1 – The module or application is currently “live” at five (5) or more sites.
* A2 – This module or application is currently “live” at less than five (5) sites.
* D – This module or application is currently in development. If the release date is beyond 12 months, Offeror must indicate how any investment in its product offerings can be protected or applied to this future offering.

In addition to the above, please provide:

* The current release version number for each module/application
* The number of releases expected to rollout each year for each module/application
* A current list of enhancements planned for the next release of each module/application
* Indicate if the proposed module/application is provided by a third party vendor or partner

3.5.5.2 General Architecture

This Section will be used to determine the ability of the proposed solution to integrate and transform the organization’s current information systems structure. Please provide answers to the following set of general architecture questions:

1. Provide a description of Offeror’s system’s overall technical architecture. Include an architectural diagram that depicts Offeror’s proposed solution. Describe the functions of all servers (e.g., web servers, Citrix etc). This architecture should align with the breakdown of Offeror’s pricing for all hardware and software components.
2. Describe with reasonable detail the model of client server computing on which Offeror’s system is structured (i.e., remote presentation, remote data management, distributed presentation, distributed data management, or disturbed function).
3. Provide information on the database and file structures used by the proposed system(s).
4. Describe Offeror’s approach and requirements for remote access to the proposed system (e.g., physician offices, clinics, patient locations, clinicians homes, etc.).
5. Describe how web technology can be used to support patients and users in remote sites for front-end/order entry, results reporting and forms completion. Describe any constraints to integrating Offeror’s web portal functionality into the Kauai Region’s web strategy. Is there secure web access capability for view only for the EMR?

3.5.5.3 System Processing/Environmental

This Section will be used to measure Offeror’s system’s ability to meet Kauai Region’s system processing and environmental requirements.

The Kauai Region’s current systems are located at and maintained by HHSC. This is anticipated to change (bring “in-house”) with the new EMR implementation.

Based upon the information provided and v Offeror’s knowledge of the organization’s environment, please complete the following questions, explaining how Offeror’s proposed system will work in this environment:

1. Technical Hardware and System Software Characteristics:
	1. Provide all of the significant technical specifications (i.e., memory, processor speed, network throughput, site preparation, disk space requirements, electric/cooling requirements, etc.). Also include the components that Offeror considers critical and should have redundancy or fault tolerance built into it. Outline any product versioning interdependencies across OS/DBMS/app/layered products. This information should cover all central site hardware, including:

Client

* operating system
* recommended memory requirements
* storage space
* browser requirements
* video requirements
* other third party software required by your application (including runtime modules)

Server

* make/model/operating system
* # of CPU’s
* memory
* disk space
* DBMS (outline versions supported) Explicitly indicate all of the data bases in your proposed system solution.
* communications software
* communications middleware
* other third party software required by your application

Other

* tools (performance, maintenance)
* report writers, ETL tools, business intelligence engines
* utilities
* any other software or hardware required by your applications
	1. What are the footprint requirements for both the client and server environments?
	2. What printers, embossers, label and bar code printers, bar code readers are supported by your system?
	3. What bar code symbol standards are supported by your system? Do you anticipate any changes to these standards? What tasks are required to incorporate changes to these standards?
	4. What print services are supported by Offeror’s system?
	5. Describe Offeror’s support for wireless and other hand held devices for access to the system.
	6. Does Offeror support RFID or infrared devices on its system? Describe how the data from these devices is captured (i.e., as client input data, HL7 interface to server etc.)
	7. Are there any different client requirements for administrative versus clinic type users?
	8. Outline any published certifications of product functionality on Offeror’s recommended client/server environments by the hardware vendors.
	9. Describe any file system placement requirements for Offeror’s proposed solution on the client/server environments (e.g., software must reside on the root directory of the server)
1. System Control and Recovery Concepts
	1. Describe the batch-processing schedule
	2. What job scheduler does the application provide? Can additional jobs be added to the job scheduler at any point in time?
	3. Can Offeror and has Offerorintegrated with external job schedulers?
	4. Describe any requirements for application downtime for batch processing, system backup, database management, or other activities. What components would be available during these downtimes and for how long? Are there any planned downtimes? If so, what are the reasons for the downtime, the impacted components and duration of the downtime?
	5. Provide a detailed description of the control ad security features found in the system. Describe the system security features, levels, and firewalls for external access restriction. Include the level at which users access to data is restricted, how security is administered in the system, and how system access is monitored (i.e., audit trail logs, change of passwords, etc.)
	6. Describe the process for adding a new user to the system. Can this process be automated or integrated with automated user provisioning tools? Can users be added in batch?
	7. Describe the tools available for the system administrator to perform file and system maintenance.
	8. Describe our ability to configure/modify/add:
* Forms
* Workflow
* Triggers, events & actions across your systems modules
* User exits
	1. Provide a detailed description of the error handling and logging features provided by Offeror’s system. Is error handling and logging managed in a dedicated software component system wide?
	2. Describe any specific product configuration parameter-setting methods. Indicate all configuration parameter maintenance or changes that will require Offeror’s professional services or fees. If available, provide an implementation checklist that details these configurations.
	3. Describe the process of automatic switching to backup or fault tolerant devices in the case of a hardware failure.
	4. Describe the database transaction logging and recovery process. Estimate times to recover the entire operational database. Provide benchmarking data.
	5. Provide a complete description of all backup and recovery procedures associated with the system.
	6. How is version control implemented between environments? What third party tools can be used or are bundled with your proposed solution? Are published best practices, version specific utilities and such, available following major product releases? If yes, please provide examples/excerpts of your last major release.
	7. How many environments does Offeror recommend be established? Does the proposed configuration concurrently support the recommended environments? If not, what additional components and licensing are required? What additional fees would be incurred?

3.5.5.4 System Development Methodology

This Section of the RFP will be used to assess Offeror’s system development methodology. Answer the following questions:

1. Does Offeror’s system development methodology include the use of software and data modeling tools and methodologies? Which tools does Offeror utilize?
2. Does Offeror have a separate Quality Assurance (QA) function? (Yes / No). Describe Offeror’s QA process.
3. Is regression testing a part of Offeror’s release process? Please describe the process and quality metrics against which a release is managed.
4. Does Offeror utilize industry standard third party regression tools as a part of its quality assurance process? Please specify which tools Offeror uses.
5. Will Offeror make available to the Kauai Region its regression test sets to facilitate the development of implementation regression testing?
6. Describe Offeror’s product release strategy in terms of platform-tiering.
7. What steps are followed when enhancements or service packs are identified and before they are generally released to a customer?
8. Describe Offeror’s version control process that is used internally in Offeror’s development organization. What industry standard tools does Offeror utilize?
9. Please comment on where Offeror sees the proposed system currently in its total product life cycle.

3.5.5.5 Database and Reporting

This Section of the RFP will evaluate Offeror’s overall database and reporting capabilities. Answer the following questions:

1. Why was this particular DBMS selected over others? Include performance benchmark data/references if performance is cited as a selection criterion.
2. Provide information on accessibility to the system’s clinical data from both a user and IT integration and management perspective:
3. What query tools, APIs, web services, etc. does Offeror provide as a part of its proposed solution?
4. What commercial third party tools are integrated with Offeror’s proposed solution?
5. Are these access methods available remotely?
6. Indicate whether these methods decode internal database encoding during extract (i.e., join with lookup/performance encoding tables, etc.)
7. If Offeror is proposing multiple applications that require separate, independent databases, clearly indicate this is and describe how the the independent databases are maintained (e.g., how they are synchronized and the procedure for updating each in the case of a downtime)
8. Describe the reporting features provided by Offeror’s system including its system’s capability to run and access the reports via the web:
9. Report writing tools for ad hoc reporting
10. Exception, trending, summary and detail reports
11. Provide a list of standard (predefined) reports available from your proposed system including system management reports such as audit log reports, security access reports, etc.

3.5.5.6 Integration

This Section of the RFP will be used to measure your system’s ability to integrate with the organization’s existing systems, other vendors’ systems, external databases, and other instruments or devices.

|  |  |
| --- | --- |
| **System Interfaces Required** | **Manufacturer / Details** |
| Medication Cabinet | Pyxis |
| Transcription | Nuance eScription |
| MR coding | 3M |
| PACS | Fuji |

1. Describe how the modules included within Offeror’s proposed solution are interfaced or integrated with each other.
2. Provide a detailed description of Offeror’s design approach to delivering batch and real-time HL7 standard interfaces. Indicate all areas where Offeror provides interfaces and specify the methodology for each (e.g., HL7, custom interface, or other standards)
3. Does Offeror’s proposed solution support interfaces routed through third party interface engines (e.g., Sybase Impact, eGate, Quovadx’s, etc)? State any known issues or specific concerns Offeror might have for use of neon interface engine.
4. Describe how the modules included in Offeror’s proposed solution would be integrated with the Kauai Region’s existing applications.
5. Does the proposed system connect to the test instruments through TCP/IP protocol?
6. Does Offeror require any other software to provide connectivity, data manipulation, or verification?
7. Please describe Offeror’s approach to the implementation, configuration and management of HL7 localized segments (z segments). Does the implementation of HL7 z segments require Offeror’s professional services?

3.5.5.7 Performance

1. Describe the scalability of the system. Assuming a 6% annual growth rate, for how many years would the proposed configuration satisfy the organization’s needs?
2. What upgrades would be required after the proposed configuration exceeds its capacity limitations?
3. What growth rate would the replacement configuration support given a seven year life (growth rate after replacement)?
4. Describe the tools available for monitoring system and application performance. What other tools have you integrated/interfaced with?
5. Define system performance and describe how you measure online response time.
6. Provide a list of critical system components and implementation factors that affect your system’s performance. For each, indicate Offeror’s recommended resolution/mitigating actions to resolve the performance concerns.
7. If the proposed system was not performing at an acceptable response rate, how would Offeror correct the response issue?
8. Describe Offeror’s response time warranty for the proposed software allowing for 100% growth in volume.
9. How would Offeror address response time beyond those that are warranted?

3.5.5.8 Service and Support

This Section of the RFP will evaluate Offeror’s overall service and support structure. Answer the following questions:

1. System Support
2. Describe the support your company is capable of providing on a continual basis (i.e., for system software, hardware and application software)
3. For which of these components does your company not take responsibility (e.g., DBMS, operating system, hardware)?
4. Which components do you contract to a third party? Include a list of the third parties, their functions, and their support schedule.
5. What support is not included in your proposal’s support cost?
6. Once a new release is issued, for how long do you support the prior release?
7. What is your sunset strategy?
8. It is required that Kauai Region purchase support through your company for system software and hardware support?
9. Describe the method used for charging support services, and list the specific hourly rates by type of skill.
10. For your proposed system, state the maximum response time between the initial report of a system (software) failure and the appearance of on-site qualified personnel who can take all corrective actions required to resume operations.
11. For the system configuration that you are proposing, what is the average customer downtime?
12. What is your average time for 100% closure/resolution of the service issue?
13. Provide a list and meeting frequency of any organized user groups, along with a listing of the active participants for each.
14. Describe the normal procedure for a user to follow when reporting a problem to the Offeror and the subsequent problem escalation process.
15. Describe any limitations to support during a 24 hour period.
16. What is the average turnaround time for system fixes? Please provide for both critical and non-critical problems.
17. Describe any “hot-line” support services available to the users and IT to report problems or ask questions (e.g. and 800-number, 24 hour phone support etc)
18. Is this support service included in your maintenance agreement?
19. To minimize or eliminate the need for an Offeror on-site visit, describe the on-site diagnostic aids (e.g., debugging tools, etc), available procedures and technical requirements for Kauai Region to use to analyze system errors and take corrective actions.
20. To what level can performance and system monitoring occur on site by Kauai Region’s Information Technology department?
21. What tools are provided to enable on-site monitoring?
22. Using industry standard skill sets (e.g. UNIX systems admin, Oracle DBA, etc.), describe the internal support staff and skill levels Kauai Region will require to maintain the system (include analysts, database administrators, operations, management, etc.)
23. Provide a description of your support organization structure. How many people are in product support and where they are geographically located?
24. How are support personnel distributed to cover all product lines, including operating systems, hardware and operations processing?
25. System Maintenance:
26. Provide a sample software maintenance contract.
27. Describe the procedure for requesting application software changes.
28. How do you allocate engineering resources to address request enhancements? What percentage of engineering resources is allocated to new feature functionality versus maintenance requests?
29. Describe how system updates are made to address new and/or modified regulatory requirements (e.g. new Medicare rules, HIPAA requirements, etc.). Discuss the process for implementing the changes and a risk-mitigation approach if the changes are not completed within the required timeframe.
30. Do you perform custom modifications on the source code? What is your process and how frequently are these modifications incorporated back in the GA (generally available) source code?
31. Does the software maintenance agreement cover the original version of the software only, or does it also include any modifications you make at our request? Does the agreement cover the costs of mandatory changes (e.g. new Medicare rules, HIPAA requirements, etc)?
32. Do you allow access to the source code by the purchaser? Do you allow for custom coding by the purchases? If not, do you place the source code in escrow?
33. If custom coding is allowed, is a development environment and tools provided? If development tools are not provided, what is required or recommended for custom development?
34. Describe the process and procedures to update application software for major releases and service packs. Include known update schedules and the impact, if any, on system performance when applied.
35. Describe new key features of the last (3) releases of the proposed application software.
36. Describe the process and procedures to update operating system software.
37. Describe the process and procedures to update third-party system software (e.g. DBMS version upgrades, etc.).
38. Does your system allow for multiple environments 9i.e. testing, training, software release, multiple production environments)? Are these licensed separately?
39. Hardware Maintenance:
40. For your proposed system, do you require that any of the hardware components be purchased from you? If yes, then please respond to the following:
41. State the types of hardware and support available.
42. State the location (city and state) of your primary maintenance office.
43. Provide a copy of a proposed hardware maintenance contract.
44. If maintenance support is subcontracted from a hardware vendor, who is responsible for problem resolution – your company, the subcontracted vendor or Kauai Region?
45. State the minimum and maximum response times for any/all types of maintenance coverage.
46. Will you support and maintain the hardware for a minimum of seven years? If not, identify the length of time your company will provide hardware support (if applicable).

3.5.5.9 System Documentation

This Section of the RFP will address the level and completeness of Offeror’s system documentation.

1. Submit indexes of one complete set of system documentation with your response. The documentation should include:
2. System description manuals
3. Technical/operations system manuals
4. User manuals
5. Installation manuals
6. Can system documentation be replicated for Kauai Region’s training purposes? Describe any restrictions.
7. Are documentation updates provided at no additional cost? Describe how and when additional costs would be incurred.
8. Are all system documentation and support materials available in electronic format as well as paper?
9. Describe the software formats used to provide documentation. How are these materials distributed (e.g. CD, web, etc.)?
10. Is new documentation provided in conjunction with application software updates?
11. Will you provide a full set of documentation at each location (multi-facility organization) upon request? Is there an additional charge for each set of documentation?
12. Do you maintain complete documentation of all changes made to the system?
13. Is this documentation available for the organization to review?
14. Provide a sample of your release upgrade documentation.

3.5.5.10 Other Information

Provide any additional information you feel the organization should know about your system/application software that has not been addressed.

**3.5.6** IMPLEMENTATION APPROACH AND TRAINING

A major objective is to avoid costly disruptions to the Kauai Region’s services and operations during the implementation and conversion of new systems. This Section will be used to determine how implementing Offeror’s system will meet this objective. Provide the requested implementation details specified below, if possible. If the materials do not exist, please indicate as such.

Offeror’s response to this Section shall be placed behind Tab F – Implementation Approach and Training of Offeror’s proposal.

1. Implementation Approach
2. Provide a detailed implementation plan for the installation of your product or application module(s). Include a timeline, necessary sequencing of events, data collection requirements, data mapping requirements, recommended training by skill level and installation effort. Include effort required for both IT and business end-users.
3. Provide a brief description of the approaches utilized in the proposed implementation plan for:
4. Workflows for existing processes
5. Configuration design and set-up
6. Hardware and software installation
7. Workflows for future processes
8. System gap analysis
9. Data conversion (patient demographic, billing and clinical data)
10. Report analysis and gap identification
11. Interface design, development and testing
12. Report design, development and testing
13. Unit, application, system, integrated and performance testing
14. Post implementation support
15. Describe the staffing you suggest the Kauai Region provide (IT and operational) to implement the proposed system/application modules. Please include a resource model with numbers, roles, skills, commitment level, etc.
16. Describe the staffing your company will provide for the implementation (i.e. number, roles, skills, level of experience, commitment level).
17. Do you agree to allow Kauai Region to interview and approve your implementation and support staff assigned? Further, do you agree to remove and replace staff that Kauai Region finds unsuitable for the effort?
18. Do you agree to have each of the assigned Offeror’s staff bound to the Kauai Region’s confidentiality requirements? How will this be communicated to your staff?
19. Describe the overall conversion approach you would recommend in order to sunset our legacy systems being replaced (e.g. data, timeline, general approach, etc.).
20. Describe any tools provided for data conversion, dictionary table loading, etc.
21. Does your system come with a “standard” set of dictionary/table/file data as a starter or training set?
22. Provide a table of previously installed sites for the last three (3) years with their respective installation timeframes. These timeframes should reflect complete installation durations. Include name, size of the hospital (number of beds) and the number of separate facilities 9hospitals, clinics, outreach centers, etc.).
23. Provide any additional work activities you find appropriate.
24. Please indicate the “end-state” support structure that you would recommend Kauai Region establish to support your proposed solution post go-live.
25. Provide a detailed sample implementation workplan for the proposed system.
26. Will you support a mutually developed workplan?
27. How soon following contract signing will you commit to software delivery and the start of the implementation?
28. Training and Education Approach
29. Project Team Training:
30. Based on your proposed solution, what education and training would you recommend for Kauai Region’s implementation project team members (IT and operational)?
31. Describe your education/training offerings for project team members. For each of your offerings include training approach, course name, objectives, location, minimum and maximum class size (if applicable) and course length.
32. Is the cost of project team training included in your implementation fee structure? Do you provide off-site as well as on-site classes at the option of Kauai Region? Please outline which classes would be on-site vs. off-site and provide location of off-site training. Is there a difference in cost? If so, please describe.
33. Technical Training
34. What technical training is required and recommended? Specify courses and hours by technical groups (e.g. operations, development, user-support, help desk, etc.).
35. What technical training is available from your company?
36. How often are the classes scheduled?
37. What lead time is required to obtain a reservation in the training class?
38. Do you offer a technical certification program?
39. Do you provide on-site or off-site training? Please outline which classes would be on-site vs. off-site and provide location of off-site training.
40. Is the cost of technical training included in your implementation fee structure?
41. User Training:
42. Describe your recommended approach for super user, train-the-trainer and end-user education and training.
43. Does your staff provide or participate in super user or end-user training sessions?
44. Do you provide user training materials? If yes, please include sample training materials.
45. Do you support computer-based learning (CBL or CBT)? Have you developed CBT’s that are available for use by Kauai Region?
46. Will you develop customized CBTs 9or modify your CBTs if applicable)?
47. If there is a separate training system (database) available with the proposed system, can end-user training be done concurrently with system development and testing? What are the pros and cons of training in this manner?
48. Please attach a sample training plan for the proposed system implementation.

**3.5.7** COST

The evaluation of the category of Cost shall be based on the prices, as indicated on the Pricing Schedule submitted with Offeror’s proposal. To determine the maximum liability to the State of Hawaii, any percentage increases proposed for extension option periods shall be also included in the cost evaluation.

**3.5.8** ADDITIONAL INFORMATION

The Offeror may submit any other pertinent information that would substantiate the Offeror has the experience, expertise and capability to provide the required services.

**3.5.9** REMOTE HOST

Require at least 99.95% uptime, please describe about your failover. Describe the security in place of your system and premises. Do you have offsite DR? How often do you schedule downtime? Are security patches installed and current?

**3.6 INTENT TO PROVIDE CERTIFICATE OF INSURANCE**

The Offeror should provide a statement that, if notified of contract award, it will submit to Kauai Region for review and acceptance the applicable certificate(s) of insurance as required within this RFP document, within five (5) business days of such notification.

**3.7 SUBMISSION OF QUESTIONS AND CLARIFICATION REQUESTS**

**Vendors may request changes and/or propose alternate language to the attached “General Terms and Conditions” during this phase only; all requests will be presented to the HHSC Legal Department for review. No requests to change the General 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 the KAUAI REGION and shall be recorded as addenda to the RFP. The only official position of the Kauai Region 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.**

**Contractors must also request, in writing, during this phase only, permission to use any Contractor agreements in addition to the Sample Agreement included in Exhibit D. The proposed Contractor agreement must be submitted for legal review by HHSC. It is important to note that as a State Agency, the Kauai Region cannot indemnify any other agency. Proposed Contractor agreements must either delete any reference to indemnification or propose alternative language.**

**No requests to change the General Terms and Conditions or use an alternative agreement (e.g., agreement from a Contractor) will be entertained after the proposals have been submitted or during the contracting process.**

**SECTION FOUR**

**PRICING SCHEDULE & COMPENSATION**

**4.1 PRICING SCHEDULE**

In accordance with the attached Scope of Services, General Conditions, Special Conditions, and all information contained within this proposal, the Offeror submits the pricing information in accordance with this Section 4 and contained within their completed and attached Cost Schedule Spreadsheet.

**4.2 COST SCHEDULE SPREADSHEET**

The Offeror is to complete the Cost Schedule Spreadsheet (Appendix F), which will provide Kauai Region with a standardized method of comparing the various costs associated with the proposed systems. Be thorough in defining all system costs as associated with the system involved. If the hardware is not purchased through your company, specifically state this fact in your response and identify the pricing difference. If any discounts apply, or special pricing is available for participating in development or beta testing, please describe and list the discounts separately.

**SECTION FIVE**

**EVALUATION**

**5.1 INTRODUCTION**

The evaluation of proposals will be conducted comprehensively, fairly, and impartially. The evaluation will be made on the basis of experience, the Offeror’s narrative discussion as to its methodology for meeting the requirements of the Scope of Services, the ability of the Offeror to best meet Kauai Region’s specified requirements and the acceptability of the proposed pricing.

**5.2 EVALUATION PHASES**

Evaluation phases will be conducted as follows:

Phase 1….Evaluation of Mandatory Requirements

Phase 2….Technical Proposal Evaluation

Phase 3….Cost Proposal Evaluation

Phase 4….Short Listing of Offerors (optional)

Phase 5….Best and Final Offers (optional)

Phase 6….Recommendation for Contract Award

**5.2.1** PHASE 1- EVALUATION OF MANDATORY REQUIREMENTS

The evaluation of the mandatory requirements, as listed below, is to be based upon a “pass/no pass” basis. The purpose of his 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 responsive in terms of “Were proposal documents, as identified below, received and do they contain the required information”)? Failure to meet any mandatory requirement (“no pass”) may be grounds for deeming the proposal non-responsible, non-responsive or both and for disqualification thereof.

Proposal “Mandatory Requirements”

* Proposal Transmittal Cover Sheet (Appendix A)
* Technical Proposal
	+ Proposal Information (Section 3.5)
	+ Functional Requirement Checklist (Appendix H)
* Pricing Schedule
	+ Price Proposal (Appendix F)
* Proposal Submission Checklist (Appendix B)
* State of Hawaii Compliance Documents

**5.2.2** PHASE 2- TECHNICAL PROPOSAL EVALUATION

Evaluation of Offeror’s technical proposal shall be conducted using the information collected in Section 3.5; the value weight percentages identified in Section 5.3; and the evaluation scoring system identified in Section 5.4.

**5.2.3** PHASE 3 – COST PROPOSAL EVALUATION

Evaluation of the cost proposal shall be conducted using the information submitted in the Cost Schedule (Appendix F), the value weight percentage identified in Section 5.3, and the evaluation scoring system identified in Section 5.4. Failure to fully complete the Cost Schedule may result in a reduction of evaluation points being awarded or no evaluation points being awarded for this phase.

**5.2.4** PHASE 4- SHORT LISTING OF OFFERORS (OPTIONAL)

After the ranking of Offerors based upon the technical and cost scoring, Kauai Region may at its discretion create a short list of Offerors to continue further in the evaluation and award process. Those Offerors not selected to continue in the evaluation process will be notified.

**5.2.5** BEST AND FINAL OFFERS (OPTIONAL)

Offerors may be requested to submit a “Best and Final” offer. “Best and Final” offers shall be evaluated, and scoring of the Offeror’s proposals shall be adjusted accordingly. If a “Best and Final” offer is requested but not submitted, the Offeror’s previous submittal shall be construed as its “Best and Final” Offer.

**5.2.6** RECOMMENDATION FOR CONTRACT AWARD

When required, the Evaluation Committee shall prepare a report summarizing proposal evaluation findings/rankings and provide recommendation for award of contract to the Regional Procurement Officer.

**5.3 EVALUATION CATEGORIES AND VALUE**

Mandatory Requirements Pass / No Pass

Technical Proposal Value Weight

 Functional Requirements 25%

 Technical Requirements 15%

 Future Capability 20%

 Implementation and Approach and Training Offerings 20%

Price Proposal 20%

Total 100%

**5.4 EVALUATION SCORING SYSTEM**

The maximum number of points available for scoring is one thousand (1000) per evaluator. The proposal receiving the highest number of points is considered statistically the best proposal and the best value to Kauai Region; 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 Kauai Region, totaling 100%. Each category will be rated between one (1) and five (5), with five 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 and negotiated price 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 proposed price multiplied by the maximum points available for price, divided by the higher proposal price.

**SECTION SIX**

**AWARD OF CONTRACT**

**6.1 AWARD OF CONTRACT**

Award of contract shall be made to the most responsible and responsive Offeror whose proposal is judged/determined, by the Kauai Region evaluation team, to provide the best value to Kauai Region, considering all evaluation reviews and results.

**6.2 CONTRACT AWARD NOTIFICATION**

An official “notice of award” letter (or email) will be provided to the successful offeror, and a “notice of non-award” letter (or email) shall be provided to all unsuccessful offerors.

No work is to be undertaken by the Contractors prior to the execution of a contract resulting from award. Kauai Region is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor prior to execution of contract.

**6.3 CONTRACT DOCUMENT**

The contract will be awarded by executing an “Agreement for Goods or Services Based Upon Competitive Sealed Proposals” (hereinafter “Agreement”) by Kauai Region and the successful Offeror. This document will serve as the official, legal contractual instrument between both parties. It is anticipated that this document will incorporate (by attachments or reference) the RFP, with any and all addendums; General Conditions and any Special Conditions; and, the Offeror’s accepted proposal, with any and all addendums, changes, negotiated agreements, etc.; all of which becomes part and whole of the Contract. A sample of his document is attached as Appendix D. understanding that the Kauai Region standard Template for such an agreement lacks specific language regarding licensing agreements, warranties and service, Kauai Region reserves the right to work with the successful offeror and modify any relevant agreement that will better serve our needs.

**6.4 GENERAL EXCISE/USE TAX**

Pursuant to Section 237-9, HRS, successful applicant(s) are required to obtain and/or possess a valid General Excise Tax License from the Hawaii State Department of Taxation prior to executing a contractual agreement with a State Agency (reference paragraph 2.e. of the GENERAL CONDITIONS). HHSC/Kauai Region enforces this requirement. Refer to the next paragraph for procedures in obtaining Department of Taxation forms and information.

Work to be performed under this solicitation is a business activity taxable under Chapter 237, Hawaii Revised Statutes (HRS), and Chapter 238, HRS, where applicable. Both out-of-state and Hawaii contractors 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.

**6.5 HEALTH AND HUMAN RESOUCRES CLEARANCES:**

* 1. CONTRACTOR shall receive instruction/direction on the topics identified below prior to commencement of contract services if applicable.
	2. Human Resources, Employee Health and Orientation Clearance - All CONTRACTOR’s employees must be cleared by Human Resources before starting employment.
	3. Health, Insurance and Confidentiality requirements: CONTRACTOR must ensure that personnel have the required health clearances and that all health, insurance and confidentiality requirements are maintained before starting work to include:
1. Facility will perform:
	* + - State and Federal background checks at a cost of $20 per individual billable to the Contractor. The Facility will bill the Contractor for the amount of checks performed. The Contractor should make prior arrangements with the Facility’s HR Department to coordinate the checks and continued work is contingent upon satisfactory clearance of the background checks.
			- OIG/GSA clearance
2. CONTRACTOR will provide satisfactory evidence of the following:
	* + - TB clearance-2 step TST or historical documentation of a 2-step TST and a current skin test within 30 days of start date or in the case of a positive TST, chest x-ray with no evidence of active TB within the past (12) months.
			- Drug screen-10 panel drug screen, marijuana, cocaine, opiates, amphetamines (including crystal methamphetamine), phencyclidine (PCP), barbiturates, propoxyphene, methaquolone, benzodiazepine, and methadone which is required within (30) days of start date.

**6.6 PROPOSAL TRANSMITTAL COVER LETTER**

The proposal transmittal cover letter must be on the applicants official business letterhead; signed by an individual authorized to legally bind the applicants; affixed with the corporate seal or notarized; and minimally include information, as written/requested, on the “sample” letter in Appendix “A”.

**6.7 PROPOSAL SUBMISSION CHECKLIST**

The proposal submission checklist is designed to be used as a tool to insure that all required documents/information is being submitted with the proposal; and, as a supplementary means of performing evaluation of the “Mandatory Requirements”, as set forth in paragraph 4.2. The checklist is required to be completed and included (as the last document) in the proposal package. The proposal submission checklist is EXHIBIT B.

**APPENDIX A**

**SAMPLE**

**PROPOSAL TRANSMITTAL COVER LETTER**

Cora Shirai, Issuing Officer, RFP # 18-02

4643 Waimea Canyon Drive

P.O. Box 337

Waimea, HI 96796

Ms. Shirai:

We propose to provide any and all goods and services as set forth in “Request for Proposals for Competitive Sealed Proposals” to provide a Health Information System (HIS), Practice Management & Electronic Medical Records System (EMR) at Kauai Veterans Memorial Hospital/West Kauai Clinics and Samuel Mahelona Memorial Hospital, **RFP # 18-02** for which prices have been set. The price(s) offered herein shall apply for

 . (insert applicable period of time)

**It is understood and agreed that we have read HHSC/Kauai Region’s Scope of Services and the attached General and Special Conditions and it is further understood that only during the question phase (Section 3.1) shall any requested changes be accepted and considered.**

**By signing this proposal, we guarantee and certify that all items included in this proposal meet or exceed any and all such Scope of Services.**

We 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 price set forth in this proposal.

You may contact the following individual(s) regarding this proposal:

Company information, as requested, follows:

* + - * Business telephone #:
			* Facsimile #:
			* E-mail address (optional):
			* Federal Tax Identification #:
			* Hawaii General Excise Tax #:

(Authorized Offeror’s Signature, Printed Name/Title)

Encl: Proposal

**APPENDIX B**

**PROPOSAL SUBMISSION CHECKLIST**

**\*Please Check Off**

**Items Submitted For HHSC Use**

 Proposal Received “On-Time”

 One Original & Copies of Proposals

 Proposal Transmittal Cover Letter:

 Official Business Letterhead

 Authorized Signature

 Corporate Seal or Notarized

 Required Information

 Technical Proposal

 Functional Requirements

\_\_\_\_\_\_ Future Capability

\_\_\_\_\_\_ Technical Requirements

 Price Proposal

 CONTRACTOR Optional Services (optional)

 Non Applicable Proposal Requirements (optional)

 Non-Acceptance of “Scope of Services” Requirements (optional)

 All Data and Information Required of the RFP

 Proprietary Documents (optional)

 Others (optional)

 Proposal Submission Checklist

 General Excise License

 Certificate of Good Standing (DCCA)

 Certificate of Compliance (DLIR)

\*IF SPECIFIC ITEM(S) ARE NOT APPLICABLE, MARK WITH “N/A”---DO NOT LEAVE BLANk

**APPENDIX C**

***Instructions for Hawaii Compliance Express***

**Hawaii Compliance Express (HCE)**

Instead of filling out forms and manually applying for the certificates listed below at the various state agencies, this new process allows businesses to register online through a simple wizard interface at:

<http://vendors.ehawaii.gov>

On the last line, click on “Create An Account” and once there, click on the circle and line marked:

|  |  |
| --- | --- |
|  | **No**, I just want to get setup to use this service. |

From this point, just fill in the blocks and follow the directions.

One simple interface covers all the forms with all the state agencies and partners. Easy to read instructions and context sensitive help make compliance safe, fast, and efficient. Using the Wizard will file with the [Business Registrations Division](http://www.hawaii.gov/dcca/areas/breg/) of the [DCCA](http://www.hawaii.gov/dcca). If you have or will have employees, the Wizard will also file with [Dept. of Labor and Industrial Relations](http://hawaii.gov/labor/).

**Vendors that elect to use the new Hawaii Compliance Express services will be required to pay an annual fee of $12.00.**

Government procurement personnel will be provided with no-cost online access to the HCE system, allowing them to view and print the compliance status of registered vendors. Since the HCE process may require the disclosure of sensitive company information, access to view information on registered vendors will be restricted to the respective vendor and to registered authorized procurement personnel.

**Vendors choosing not to participate in the program will be required to provide the paper certificates. This can be done by contacting the various state agencies below:**

**DLIR Certificate of Compliance.** By law vendors are required to provide a Certificate of Compliance from the Hawaii State Department of Labor and Industrial Relations (DLIR), TO ENSURE COMPLIANCE WITH LAWS, AS APPLICABLE, CONCERNING UNEMPLOYMENT INSURANCE, WORKERS' COMPENSATION, TEMPORARY DISABILITY INSURANCE, AND PREPAID HEALTH CARE.

Visit <<http://hawaii.gov/labor/forms/LIR27_11-29-04.pdf>> to obtain Form LIR#27. Once approved by DLIR, ***provide HHSC a copy of the certificate****.*

**Certificate of Good Standing.** By law vendors are required to provide a Certificate of Good Standing from the Hawaii State Department of Commerce and Consumer Affairs (DCCA).

Business are required to be registered to do business in the State of Hawaii. (Certificate of Good Standing not required for "Sole Proprietorship".)

Visit <<http://www.ehawaiigov.org/intials/>> register on-line or, to obtain a Certificate by phone call (808) 586-2727. ***Provide HHSC a copy of the certificate.***

**APPENDIX D**

SAMPLE

HAWAII HEALTH SYSTEMS CORPORATION

KAUAI REGION

AGREEMENT FOR GOODS OR SERVICES BASED UPON COMPETITIVE SEALED PROPOSALS

AGREEMENT #**:**

**THIS AGREEMENT**, executed on the respected dates of signatures of the parties shown hereafter, between Hawaii Health Systems Corporation, Kauai Region, Kauai Veterans Memorial Hospital/West Kauai Clinics and Samuel Mahelona Memorial Hospital, an Agency of the State of Hawaii (hereinafter "HHSC/Kauai Region"), by its Chief Executive Officer (hereinafter "CEO"), whose address is 4643 Waimea Canyon Drive, Waimea, HI 96796, and, (hereinafter "CONTRACTOR"), , under the laws of the State of whose business address and taxpayer identification number are as follows: .

RECITALS

* 1. The HHSC/Kauai Region is in need of the goods or services, or both, described in this Agreement and its attachments.
	2. The HHSC/Kauai Region has issued a request for competitive sealed proposals, and has received and reviewed proposals submitted in response to the request.
	3. The CONTRACTOR has been identified as the responsible and responsive offeror whose proposal is the most advantageous for the HHSC/Kauai Region, taking into consideration price and the evaluation factors set forth in the request.
	4. The HHSC/Kauai Region 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/Kauai Region and the CONTRACTOR agree as follows:

* + 1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the HHSC/Kauai Region, provide all the services set forth in the request for competitive sealed proposals, **RFP # FY 18-02** ("REQUEST"), 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 REQUEST.
		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 ($ ), including taxes and expenses incurred.
		4. Bonds. The CONTRACTOR is not required to provide a performance and/or payment bond.
		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 per incident, in accordance with the terms of paragraph 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: Kauai Veterans Memorial Hospital, P.O. Box 337, Waimea, HI 96796. Notice to the "head of the purchasing agency" and/or “Agency Procurement Officer” as denoted in the General Conditions shall be sent to: Kauai Veterans Memorial Hospital, Attn: Procurement Office, P.O. Box 337, Waimea, HI 96796. 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 Kauai Region 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/KAUAI REGION**

SIGNATURE:

PRINTED NAME: Peter Klune

TITLE: RCEO – Kauai Region

DATE:

\***CONTRACTOR**

SIGNATURE:

PRINTED NAME:

TITLE:

DATE:

**\* Evidence of authority of the CONTRACTOR's representative to sign this Agreement for the CONTRACTOR must be attached.**

**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/Kauai Region, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges.

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

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

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

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

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

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

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

CONTRACTOR understands that the Agreement to which this document is attached is voidable on behalf of the State or HHSC/Kauai Region 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/Kauai Region.

**CONTRACTOR**

By:

Title:

Date:

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

**ATTACHMENT 1**

**SCOPE OF SERVICES**

**ATTACHMENT 2**

**TIME OF PERFORMANCE**

**ATTACHMENT 3**

**COMPENSATION**

**­HAWAII HEALTH SERVICES CORPORATION GENERAL CONDITIONS**

(PURCHASE OF GOODS AND SERVICES - NON-HEALTHCARE SERVICE PROVIDERS)

(FOR NON-HRS 103D AGREEMENTS)

 **- - -Table of Contents - - - Page**

1. COORDINATION OF SERVICES BY HHSC. 2
2. RELATIONSHIP OF PARTIES: INDEPENDENT CONTRACTOR STATUS AND RESPONSIBILITIES, INCLUDING TAX RESPONSIBILITIES. 2
3. PERSONNEL REQUIREMENTS. 2
4. CONTRACTOR EXCLUSION FROM FEDERAL PROGRAMS. 2
5. NONDISCRIMINATION. 2
6. CONFLICTS OF INTEREST. 2
7. SUBCONTRACTS AND ASSIGNMENTS: CHANGE OF NAME. 2
8. INDEMNIFICATION AND DEFENSE. 3
9. LIQUIDATED DAMAGES. 3
10. SUSPENSION OF AGREEMENT. 3
11. TERMINATION FOR DEFAULT. 3
12. TERMINATION FOR CONVENIENCE BY HHSC. 4
13. CHANGE ORDERS TO GOODS AND SERVICES AGREEMENTS. 4
14. MODIFICATIONS OF AGREEMENT. 5
15. VARIATION IN QUANTITY FOR DEFINITE QUANTITY AGREEMENTS. 5
16. CLAIMS BASED ON THE HEAD OF THE PURCHASING AGENCY'S ACTIONS OR OMISSIONS. 5
17. COSTS AND EXPENSES. 5
18. PAYMENT PROCEDURES. 5
19. PROMPT PAYMENT OF SUBCONTRACTORS. 6
20. CONFIDENTIALITY OF MATERIAL. 6
21. CORPORATE COMPLIANCE PROGRAM. 6
22. BUSINESS ASSOCIATEADDENDUM. 7
23. PUBLICITY. 7
24. OWNERSHIP RIGHTS AND COPYRIGHT. 7
25. INSURANCE. 7
26. LIENS AND WARRANTIES. 7
27. ACCESS TO BOOKS AND RECORDS AND AUDIT BY HHSC. 7
28. ANTITRUST CLAIMS. 7
29. DISCOUNT AND REBATE. 8
30. GOVERNING LAW. 8
31. COMPLIANCE WITH LAWS. 8
32. ACCESS TO HHSC NETWORK AND SYSTEMS. 8
33. CAMPAIGN CONTRIBUTIONS. 8
34. ENTIRE AGREEMENT. 8
35. COUNTERPARTS. 8
36. SEVERABILITY. 8
37. WAIVER. 8
38. ACCEPTANCE OF GOODS AND SERVICES. 8
39. OBSOLETE PARTS/LONGTERM PARTS AVAILABILITY (Goods and Equipment Agreements Only). 8
40. DISPUTES. 8
41. **COORDINATION OF SERVICES BY HHSC**. The "head of the purchasing agency" (through the Technical Representative(s) or other designee as specified in the Agreement) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in this Agreement. The CONTRACTOR shall maintain communication with the head of the purchasing agency through the Technical Representative(s) or other designee at all stages of the CONTRACTOR's work, and submit to the head of the purchasing agency for resolution any questions which may arise as to the performance of this Agreement. "Purchasing agency" as used in these General Conditions means and includes any HHSC region or facility which is authorized to enter into contracts for the procurement of goods and services. The term "HHSC" refers to HHSC and the region or facility entering into this Agreement. The term, “CONTRACTOR” includes all employees, agents, subcontractors, and other entities and persons utilized by the CONTRACTOR to fulfill the obligations of this Agreement. It will be the responsibility of CONTRACTOR to ensure that those other persons and entities follow the terms of this Agreement.
42. **RELATIONSHIP OF PARTIES: INDEPENDENT CONTRACTOR STATUS AND RESPONSIBILITIES, INCLUDING TAX RESPONSIBILITIES**.
	1. In the performance of services required under this Agreement, the CONTRACTOR is an independent contractor, with the authority and responsibility to control and direct the performance and details of the work and services required under this agreement; however, HHSC shall have a general right to inspect work in progress to determine whether, in HHSC's opinion, the services are being performed by the CONTRACTOR in compliance with this Agreement. Unless otherwise provided by special condition, it is understood that HHSC does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to provide services to other individuals or entities.
	2. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Agreement, agents or employees of HHSC for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from HHSC any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to HHSC employees.
	3. 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.
	4. 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.
	5. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, HRS, and shall comply with all requirements thereof.
	6. 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.
43. **PERSONNEL REQUIREMENTS**.
	1. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Agreement.
	2. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Agreement, and that all applicable licensing and operating requirements imposed or required under federal, state or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied. Where the facility is Joint Commission accredited, CONTRACTOR agrees to meet all applicable Joint Commission standards.
44. **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.
45. **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.
46. **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.
47. **SUBCONTRACTS AND ASSIGNMENTS: CHANGE OF NAME**.
	1. No assignment without consent. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR’S duties, obligations, or interests under this Agreement and no such assignment or subcontract shall be effective unless the CONTRACTOR obtains the prior written consent of HHSC. Additionally, no such assignment or subcontract shall be effective unless the contractors assignee or subcontractor obtains a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9 HRS.
	2. 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.

* 1. 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.
1. **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.
2. **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.
3. **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.
	1. 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.
	2. 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.
	3. 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.
	4. 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.
4. **TERMINATION FOR DEFAULT**.
	1. 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.
	2. CONTRACTOR’S duties. Notwithstanding termination of the Agreement and subject to any directions from the head of the purchasing agency, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the State of Hawaii or HHSC has an interest.
	3. 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.
	4. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and failure arises out of causes such as: acts of God; acts of a Public enemy; acts of the State of Hawaii and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Agreement. Upon request of the CONTRACTOR, the head of the purchasing agency shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR’S progress and performance would have met the terms of the Agreement, the delivery schedule shall be revised accordingly, subject to the rights of HHSC under this Agreement. As used in this paragraph the term “subcontractor” means subcontractor at any tier.
	5. 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.
	6. 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.
5. **TERMINATION FOR CONVENIENCE BY HHSC.**
	1. Termination for convenience of goods and services agreements. The head of the purchasing agency may, when the interests of HHSC so require, terminate this Agreement in whole or in part, for the convenience of HHSC. HHSC shall give written notice of the termination to the CONTRACTOR specifying the part of the Agreement terminated and when such termination becomes effective. HHSC shall exercise its rights under this paragraph in good faith and only when circumstances subsequent to the signing of this Agreement are changed to the extent that continuation of the Agreement is not in the best interest of HHSC. Such termination shall not be arbitrary or capricious.
	2. CONTRACTOR’s obligations. The CONTRACTOR shall mitigate the cost of termination and incur no further obligations in connection with the terminated performance. The CONTRACTOR will stop performance to the extent specified on the date(s) set in the notice of termination. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance. The head of the purchasing agency may direct the CONTRACTOR to assign the CONTRACTOR’S right, title, and interest under terminated orders or subcontracts to HHSC. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.
	3. Right to goods and work product. The head of the purchasing agency may require the CONTRACTOR to transfer title and deliver to HHSC in the manner and to the extent directed by the head of the purchasing agency:
		1. Any completed goods or work product; and
		2. The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called “manufacturing material”) as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Agreement; and
		3. The CONTRACTOR shall, upon direction of the head of the purchasing agency, protect and preserve property in the possession of the CONTRACTOR in which HHSC has an interest. If the head of the purchasing agency does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that HHSC has breached the Agreement by exercise of the termination for convenience provision.
	4. Compensation. The CONTRACTOR may submit a termination claim specifying the unavoidable costs incurred because of the termination for convenience. This claim is in addition to any claim for payment for goods or services already performed prior to the termination. The head of the purchasing agency shall review the termination claim and respond to the CONTRACTOR with written objections or full payment within 60 days, provided that the claim is substantiated with invoice documentation. The amount paid for a termination claim shall be determined by the head of the purchasing agency but in no event shall exceed the amount remaining on the contract.
6. **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.
	1. Change clause. By written order, at any time, and without notice to any surety, the head of the purchasing agency may, unilaterally, order:
		1. Changes in the work within the scope of the Agreement; and
		2. Changes in the time of performance of the Agreement that do not alter the scope of the work of the Agreement.
	2. Adjustment of price or time for performance. If any change order increases or decreases the CONTRACTOR’S cost of, or the time required for, performance of any part of the work under this Agreement, an adjustment shall be made and the Agreement modified in writing accordingly. Any adjustment in Agreement price made pursuant to this clause shall be determined, where applicable, as negotiated. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Agreement as changed, provided that the head of the purchasing agency promptly and duly makes the provisional adjustments in payment or time for the direct costs of the work as HHSC deems reasonable. The right of the CONTRACTOR to dispute the Agreement price or time required for performance or both shall not be waived by its performing the work, provided however, that it follows the written notice requirements for disputes and claims established in the Agreement or in these rules.
	3. Time period of claim. Within ten (10) days after receipt of a written change order, unless the period is extended by the head of the purchasing agency in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.
	4. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written response is not given prior to final payment under this Agreement.
	5. Claims not barred. In the absence of a change order, nothing in the clause shall be deemed to restrict the CONTRACTOR’S right to pursue a claim under the Agreement or for breach of contract.
7. **MODIFICATIONS OF AGREEMENT**.
	1. In writing. Any modification, alteration, amendment, change or extension of any term, provision or condition of this Agreement shall be made by written amendment to this Agreement signed by the CONTRACTOR and HHSC. Change orders shall be made in accordance with paragraph 13 herein. Notice to any surety is not required.
	2. 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.
	3. 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. Anyadjustment in price made pursuant to this clause shall be determined, where applicable, in accordance with the terms of this Agreement or as negotiated.
	4. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Agreement and the claims are not made prior to final paymentunder this Agreement.
	5. 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 orfor breach of contract.
8. **VARIATION IN QUANTITY FOR DEFINITE QUANTITY AGREEMENTS.** Upon the agreement of HHSC and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in the Agreement, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the head of the purchasing agency makes a written determination that such an increase will either be more economical than awarding another Agreement or that it would not be practical to award another agreement.
9. **CLAIMS BASED ON THE HEAD OF THE PURCHASING AGENCY'S ACTIONS OR OMISSIONS**.
	1. 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:
			1. Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission; or
			2. 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
			3. Within such further time as may be allowed by the head of the purchasing agency in writing.
		2. Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages or an extension of time. The head of the purchasing agency, upon receipt of such a notice, may rescind such action, remedy such omission or take such other steps as may be deemed advisable.
		3. Basis must be explained. The notice required by this paragraph must describe as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages or an extension of time may be remedies to which the CONTRACTOR is entitled; and
		4. Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the head of the purchasing agency within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to HHSC, justifying the claimed additional costs or an extension of time in connection with such changes.
	2. CONTRACTOR not excused. Nothing herein contained, however shall excuse the CONTRACTOR from compliance with any rules or laws precluding collusion or bad faith in causing the issuance of or performing change orders which are clearly not within the scope of the Agreement.
10. **COSTS AND EXPENSES.** Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Agreement shall be subject to the following guidelines, unless otherwise stated in the Agreement:
	1. Reimbursement for air transportation shall be for actual cost or coach class airfare, whichever is less.
	2. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
	3. 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.
	4. 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.
11. **PAYMENT PROCEDURES**.
	1. 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.
	2. 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.
12. **PROMPT PAYMENT OF SUBCONTRACTORS.**

a. Generally. Any money paid to a CONTRACTOR shall be disbursed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes regarding payment.

b. Final payment. Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor’s performance under the subcontract.

c. Penalty. The procurement officer or the CONTRACTOR, as applicable, will be subject to a penalty of one and one-half per cent per month upon outstanding amounts due that were not timely paid by the responsible party under the following conditions. Where a subcontractor has provided evidence to the CONTRACTOR of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request as described in paragraph (d), and:

(1) Has provided to the CONTRACTOR an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State, as provided in Section 103-32.1, HRS; or

(2) The following has occurred:

(A) A period of ninety days after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has elapsed without written notice of a claim given to CONTRACTOR and the surety, as provided for in Section 103D-324, HRS (reference of HRS 103D-324 provision does not intend to imply that this contract is governed by that chapter or the implementing rules and regulations); and

(B) The subcontractor has provided to the CONTRACTOR, an acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two times the amount being retained or withheld by the CONTRACTOR; any other bond acceptable to the CONTRACTOR; or any other form of mutually acceptable collateral, then, all sums retained or withheld from a subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the procurement officer to the CONTRACTOR and subsequently, upon receipt from the procurement officer, by the CONTRACTOR to the subcontractor within the applicable time periods specified in paragraph (b) and Section 103-10, HRS. The penalty may be withheld from future payment due to the CONTRACTOR, if the CONTRACTOR was the responsible party. If a CONTRACTOR has violated paragraph (2) three or more times within two years of the first violation, the contractor shall be referred by the procurement officer to the contractors license board for action under Section 444-17(14), HRS.

d. A properly documented final payment request from a subcontractor, as required by paragraph (c), shall include:

(1) Substantiation of the amounts requested;

1. 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;

1. 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
2. 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.

* 1. 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.
1. **CONFIDENTIALITY OF MATERIAL**.
	1. All material given to or made available to the CONTRACTOR by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of HHSC. It is acknowledged and agreed that all of the trade secrets, business plans, marketing plans, know how, data, contracts, including this Agreement, documents, scientific and medical concepts, billing records, personnel records, medical records of any kind, and referral sources for existing or future services, products, operations, management, business, pricing, financial status, valuations, goals, strategies, objectives and agreements of HHSC and any of its facilities, affiliates or subsidiaries, and all patient information in any form, whether written, verbal or electronic are confidential (“Confidential Information”); provided, however, that Confidential Information, with the exception of patient information, shall not include information that is in the public domain.
	2. 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.
2. **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](http://www.hhsc.org/)). The CONTRACTOR, by signing this contract, acknowledges that it has read said description, and that the CONTRACTOR knows of the fact and substance of the Corporate Compliance Program, which governs operations at all facilities of the HHSC. The CONTRACTOR understands and agrees that employees, agents, contractors and subcontractors performing any services at any of the HHSC facilities shall be fully subject to such Corporate Compliance Program, as may be amended from time to time, as well as all federal program requirements and applicable policies and procedures of HHSC and its facilities. The Corporate Compliance Program requires periodic training, including an orientation program, of all people who provide financial, business office, personnel, coding, medical records information systems and clinical services in the facility. The CONTRACTOR agrees to cause its employees, agents and contractors who provide financial, business office, personnel, coding, medical records information systems and/or clinical services at any of the HHSC facilities to review the posted orientation materials and participate in any compliance training programs HHSC may require.
3. **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](http://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.
4. **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.
5. **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.
6. **INSURANCE**. During the term of this Agreement, CONTRACTOR shall maintain at all times or cause to be maintained general and professional liability insurance coverage for CONTRACTOR and its employees rendering services to HHSC under this Agreement. The insurance policies shall be issued by a company or companies authorized to do business in Hawaii and approved by HHSC, with combined single limits of not less than ONE MILLION DOLLARS ($1,000,000) per occurrence and THREE MILLION DOLLARS ($3,000,000) in the aggregate, or such greater amount as may be required from time to time by HHSC. HHSC shall receive not less than thirty (30) days notice prior to any cancellation or material change or reduction in coverage. No such material change or reduction may be made without approval from HHSC. HHSC shall be listed as an additional insured on all policies. Prior to the commencement of this Agreement, CONTRACTOR shall provide HHSC with a certificate of insurance. Thereafter, prior to the expiration of each policy period, the CONTRACTOR shall provide HHSC with certificates of insurance evidencing the foregoing coverage and provisions. HHSC reserves the right to request a certified copy of the policies. CONTRACTOR shall also carry workers’ compensation insurance for CONTRACTOR’S employees in the amounts required by applicable law. Failure to maintain the necessary insurance in accordance with the provisions set forth herein shall constitute a material breach of this Agreement and HHSC shall thereafter have the option of pursuing remedies for such breach and/or immediate termination of this Agreement.
7. **LIENS AND WARRANTIES**.
	1. Liens. All products provided under this Agreement shall be free of all liens and encumbrances.
	2. 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.
8. **ACCESS TO BOOKS AND RECORDS AND AUDIT BY HHSC**. If the value or cost of Services rendered to HHSC pursuant to this Agreement is Ten Thousand Dollars ($10,000.00) more over a twelve-month period, CONTRACTOR agrees as follows:
	1. 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
	2. If any such Services are performed by way of subcontract with another organization and the value or cost of such subcontracted Services is Ten Thousand Dollars ($10,000.00) or more over a twelve month period such subcontract shall contain and CONTRACTOR shall enforce a clause to the same effect as paragraph 26.a, above.
	3. The availability of CONTRACTORS’ books, documents and records shall be subject to all applicable legal requirements, including such criteria and procedures for obtaining access that may be promulgated by the Secretary. The provisions of paragraph 26.a and 26.b shall survive the expiration or other termination of this Agreement regardless of the cause of such termination.
	4. 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.
9. **ANTITRUST CLAIMS.** The HHSC and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to HHSC any and all claims for overcharges as to goods and materials purchased in connection with this Agreement, except as to overcharges which result from violations commencing after the price is established under this Agreement and which are not passed on to the HHSC under an escalation clause.
10. **DISCOUNT AND REBATE.** CONTRACTOR hereby acknowledges its obligations to comply with any and all requirements imposed upon it as a seller under 42 U.S.C. Sec. 1320a-7b(b)(3)(A) and 42 C.F.R. Sec. 1001.952(h) Discounts.
11. **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.
12. **COMPLIANCE WITH LAWS.** The CONTRACTOR shall comply with all federal, State, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR’S performance of this Agreement. Other laws which may be applicable to contractors include, but are not limited to: HRS Chapters 383, 386, 387, and 393. It shall be the responsibility of the CONTRACTOR to determine applicability and comply with the law.
13. **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 polices summarized and posted on the HHSC Procurement internet site ([www.hhsc.org/GC](http://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.
14. **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.
15. **ENTIRE AGREEMENT.** This Agreement sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the HHSC and the CONTRACTOR relative to this Agreement. This Agreement supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the HHSC and the CONTRACTOR other than as set forth or as referred to herein.
16. **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.
17. **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.
18. **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.
19. **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.
20. **OBSOLETE PARTS/LONG TERM PARTS AVAILABILITY (Goods and Equipment Agreements Only).** CONTRACTOR shall timely report on the status of end of life (EOL) hardware that has been procured for the purchased or leased product. EOL hardware includes the following: electronic components/piece parts and mechanical hardware. CONTRACTOR shall provide advanced notification in writing to the Technical Representative of any changes to tooling, facilities, materials, availability of parts, or processes that could affect the contracted product. This includes but is not limited to fabrication, assembly, handling, inspection, acceptance, testing, facility relocation, or introduction of a new manufacturer. CONTRACTOR shall notify the HHSC Technical Representative of any pending or contemplated future action to discontinue articles purchased or replacement parts for the articles purchased pursuant to this Agreement and shall work with HHSC to determine the need to stockpile any parts for the likely life of the product and offer those parts to HHSC prior to the actual discontinuance. CONTRACTOR shall extend opportunities to HHSC to place last time buys of such articles with deliveries not to exceed twelve months after the last time buy date.
21. **DISPUTES.** Prior to resorting to any remedies allowed by law, disputes between the CONTRACTOR and HHSC arising out of this Agreement shall first be addressed in a telephonic or in-person meeting between the HHSC Technical Representative or designee and the CONTRACTOR’S representative. If the issue is not resolved to the mutual satisfaction of the Parties, a HHSC Regional CFO shall hold a telephonic or in-person meeting with the manager of the CONTRACTOR’S representative. Both Parties shall discuss and attempt to resolve the issues in good faith.

END OF GENERAL CONDITIONS

**APPENDIX E**

**HAWAII HEALTH SERVICES CORPORATION**

**Information Technology Special Terms and Conditions for Software and Services**

**1) Definitions:** As used herein:

**“Acceptance”** shall mean that the Deliverables have passed Acceptance Testing and shall be formalized in a written notice from HHSC to CONTRACTOR, as described in “Acceptance and Acceptance Criteria”.

 **“Acceptance Date”** shall mean the date upon which HHSC accepts the Deliverables as provided in the Agreement.

**“Acceptance Testing”** shall mean the process for ascertaining that the Deliverables meet the Standards of Performance set forth in the contractprior to Acceptance by the HHSC as described in “Acceptance and Acceptance Criteria”.

**“Agreement”** shall mean this document, all schedules and exhibits, and all amendments hereto. **“Business Days and Hours”** shall mean Monday through Friday, 6:00 a.m. to 6:00 p.m., Hawaii Standard Time. Hawaii state holidays may be non-standard work days for HHSC.

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

**“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 Agreement and as further defined in the agreement.

“**Data**” means all information, images, records, files, forms, documents and data received, created, transmitted or maintained by or on behalf of the HHSC and/or its users using the Software or other Deliverables.

**“Deliverables”** shall mean all project materials, including goods, Software, data, and documentation provided to HHSC by the CONTRACTOR under the terms of this Agreement or created during the performance or provision of services hereunder. Deliverables include the Software and “Work Product” as defined below. All Software source and object code is the property of the Contractor and is licensed nonexclusively to the HHSC, pursuant to the terms of the software license contained herein.

**“Delivery Date”** shall mean the date by which the Products ordered hereunder must be delivered.

**“Effective Date”** shall mean the first date this Agreement 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 Agreement.

**“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.

**“HHSC”** shall mean the Hawaii Health Systems Corporation, (HHSC), 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 Agreement and as further defined in the agreement.

**“License”** shall mean the rights granted to HHSC and its users to use the Software that is the subject of this Agreement.

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

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

**“Proposal”** shall mean CONTRACTOR’s proposal to HHSC’s RFP.

**“RFP”** shall mean the RFP document(s) used to establish this Agreement, including all its amendments, modifications and exhibits.

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

**“Software”** shall mean the object code version of computer programs licensed pursuant to this Agreement, including all interfaces required for the Software to operate in accordance with the Specifications. 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 Updates (as defined in Section 13).

**“Specifications”** shall mean the technical, functional and other specifications set forth in the HHSC Statement of Work (SOW), RFP, any additional specifications set forth in CONTRACTOR’s Proposal, and the specifications set forth in CONTRACTOR’s Product documentation, whether or not CONTRACTOR produces such documentation before or after this Agreement’s Effective Date. In the event of any conflict or inconsistency among the documents comprising the Specifications, the position most favorable to HHSC shall control.

**“Standard of Performance”** shall mean the criteria that must be met before Software Acceptance, as set forth in the agreement and/or the SOW. 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 agreement.   SOW should include agreement to a particular project management approach and specify/require reporting on budget/timeline, etc.  The SOW shall include, without limitation, following:

* Scope of work
* Preliminary implementation plan
* Conversion plan
* Standards of Performance for Acceptance Testing and details of the Acceptance Testing process
* Maintenance, support and service level agreements, including uptime guarantee, down-time procedures and service credits in such amounts to be agreed in the SOW.
* Description of training approach to be used (i.e. train the trainer, use of in-house trainers, purchase training, etc)

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

**“Work Product”** shall mean data, software and other products produced under this Agreement specifically for the HHSC, including but not limited to, regardless of medium/media used, 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. The Software shall not be deemed to be a Work Product under this Agreement, and for clarification, and notwithstanding anything to the contrary in the Agreement or otherwise, HHSC acknowledges that interfaces that CONTRACTOR may supply to the Software if usable for another customer of CONTRACTOR’s shall not constitute Work Product and in no event shall title to the Software or such interfaces transfer to the HHSC.

**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 Agreement.

a) 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. Acceptance with appropriate standards of operations or uses of said Deliverables may be shown by identification markings or other means of the appropriate certifying standards organization.

b) CONTRACTOR represents and warrants that (i) the Software meets, and will continue to meet, the requirements necessary to qualify as Qualified EHR and will be Certified EHR, as those terms are defined under the Health Information Technology for Economic and Clinical Health Act of 2009 and its implementing regulations, as may be amended from time to time (the “HITECH Act”), (ii) the Software is, and will continue to be, certified as a Complete EHR, as that term is defined under the HITECH Act, by an authorized testing and certification body recognized by the Secretary of Health and Human Services, and (iii) the Software will meet all criteria, standards and implementation specifications necessary for the HHSC and its users to achieve “meaningful use”, as defined by the HITECH ACT. The parties agree that additional conditions, such as CONTRACTOR’s obligations, to the foregoing representation will be considered by HHSC in the Statement of Work, and additional representations and warranties relating to EHR certification, EHR functionality and compliance with applicable laws will be included in the Statement of Work.

c) Site Preparation: CONTRACTOR shall provide HHSC complete site requirement specifications for the Deliverables, if any. These specifications shall ensure that the Deliverables to be installed shall operate according to the Specifications and their respective warranties 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.

d) 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 as long as HHSC is contracted to receive support and maintenance. Deliverables failing to the Standards of Performance 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, as more fully described in the warranty provisions of this Agreement. The HHSC is responsible for the return costs related to the termination of the Agreement, 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.

e) Specifications: 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 services pursuant to this Agreement without a minimum of 30-days notice prior written approval by the HHSC Contract Administrator, except in the event of such assigned person’s death, disability, termination or family emergency. 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 Agreement, upon written notice to CONTRACTOR specifying the reason for such termination. Except in the case of an illegal or otherwise wrongful act by such person, the HHSC will use its best efforts to give CONTRACTOR at least 30 days’ prior notice of such termination. Upon such termination, the HHSC may request acceptable substitute personnel or terminate the agreement services provided by such personnel.

**4) Software License:**

a) License Grant. CONTRACTOR hereby grants to the HHSC a personal, non-exclusive, fully-paid (subject to the payment of applicable charges), perpetual and irrevocable (except with respect to any term licenses as specifically set forth in the SOW or upon a termination based on a material breach of the provisions of this Agreement by the HHSC) license, under all applicable intellectual property rights, to use, and install the Software, in machine readable object code form and to use the Documentation provided by CONTRACTOR for the HHSC’s internal business purposes, and to make a reasonable number of copies necessary to permit backup including fail-back, load balancing or synchronization. The license to use the Software is extended to employees, independent contractors, consultants, outsourced workers and interns hired by the HHSC that are performing services for the HHSC provided that the use by such personnel are bound by all obligations specified herein. The foregoing license grants include a license under any current and future patents owned or licensable by CONTRACTOR to the extent necessary: (i) to exercise any license right granted herein; and (ii) to combine the Software with any hardware and software contemplated in the SOW or CONTRACTOR’s Documentation.

b) Intellectual Property Rights. CONTRACTOR or its suppliers have exclusive title to, copyright in, trade secret right in, and the right to grant additional licenses to: the Deliverables (other than Work Product), and Documentation and derivative works of the foregoing. Without limiting the preceding sentence, CONTRACTOR shall obtain HHSC’s written consent before using derivative works created solely by HHSC. HHSC shall not remove or permit removal of any identifying mark or indicia of CONTRACTOR’ or other suppliers’ rights in any of the Deliverables. HHSC shall include such mark or indicia on any copies or partial copies of such items. Third Party Software provided by CONTRACTOR may have license restrictions on the number of users, workstations, or servers and other qualifying terms and conditions as indicated in the SOW.

c)Metric-Based Restrictions. Notwithstanding the one-copy license indicated above, if a Deliverable is indicated as being metric restricted, then such number indicates the maximum number licensed for the designated metric. By way of example -- and in no way intended to be the type of metric restriction necessarily used -- if the metric refers to: (a) workstations or servers, then it is the maximum number of workstations or servers on which the applicable Software may be installed; (b) concurrent users, then it is the maximum number of users permitted to use such Software concurrently; (c) named users, then it is the maximum number of users who are designated by HHSC as the only authorized users of such Software; (d) beds, then it is the maximum number of beds HHSC is permitted to have at those facilities that are processing data using such Software; or (e) procedures, then it is the maximum number of procedures that HHSC may use such Software to process and store. The Deliverables may contain embedded software controls or counters to monitor a particular metric restriction. If HHSC exceeds the applicable metric or scope of the license, then it shall notify CONTRACTOR within thirty (30) days after such event and shall execute an amendment to expand the license (if appropriate). For Software which by its nature is PC-based, if there is no metric restriction, then HHSC may make a reasonable number of copies of such Software for processing within the scope of this grant of license.

d) Embedded Code. 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 (“Embedded Code”). Embedded Code may be provided on separate media, such as CD-ROM, or may be included within the hardware at or prior to delivery. Such Embedded Code is proprietary, copyrighted, and may also contain valuable trade secrets and may be protected by patents. The HHSC shall have a worldwide, nonexclusive, non-sublicensable license to use such Embedded Code and/or documentation for its internal use by anyone performing duties on behalf of HHSC to fulfill their work obligations. This includes using the Embedded Code to interface system data with other systems, in accordance with the SOW. The HHSC may make and install copies of the Embedded Code to support the authorized level of use. Provided, however that if the hardware is inoperable, the Embedded Code 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 reserves the right to subcontract the operation of the Embedded Code to a qualified third-party “business associate”, which will be bound by all obligations specified herein, including the applicable confidentiality obligations. HHSC shall have the right to access the Software in a remote hosted environment. If the hardware is transferred, the HHSC shall i) destroy all Embedded Code copies made by the HHSC, ii) deliver the original or any replacement copies of the Embedded Code to the transferee, and iii) notify the transferee that title and ownership of the Embedded Code 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 Statement of Work documents.

e) For any additional software or subscription services not directly offered by CONTRACTOR, the CONTRACTOR shall specify in the SOW 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. CONTRACTOR represents and warrants that, except as expressly set forth in the SOW, no additional software or subscription services are required to be licensed or acquired by the HHSC in order for the Deliverables to function in accordance with the Specifications.

**5) Work Product:** Work Product is the property of the HHSC and must be kept confidential or returned to the HHSC, or destroyed as required by the HHSC.

**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.

**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 Agreement.

**8) No Surreptitious Code Warranty:**

a) CONTRACTOR warrants to HHSC that no licensed copy of the Software provided to HHSC at the time of installation or delivery 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 Agreement. The warranty is referred to in this Agreement as the “No Surreptitious Code Warranty.”

b) As used in this Agreement, “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 Agreement, “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.

**9) Patent, Copyright, and Trade Secret Protection:**

a) CONTRACTOR has created, acquired or otherwise has rights in, and may, in connection with the provision of the Deliverables and 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 Work Product 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, proprietary to CONTRACTOR or the operation of such Deliverables, infringes a United States patent, or copyright or violates a trade secret. The CONTRACTOR shall pay the costs of any such action and damages finally awarded against the HHSC in any such action or any settlement to which CONTRACTOR consents. 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 Deliverable proprietary to 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 noninfringing and continue to meet the 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 (calculated based upon 5-year straight line depreciation) 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 Agreement impractical, the HHSC shall then have the option of terminating the Agreement, 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 (calculated based upon 5-year straight line depreciation) or damage.

If an infringement claim is asserted, or an injunction is obtained, against HHSC’s use of any item of third party Software in connection with an infringement claim, or if HHSC reasonably anticipates that an item of third party Software will become subject of an infringement claim, CONTRACTOR will do one of the following, at CONTRACTOR’s sole option,  (i) procure the right for HHSC to continue exercising all licenses under the Agreement at no additional cost to the HHSC; (ii) promptly replace the subject third party Software at no additional cost to HHSC with software that avoids the infringement claim while being substantially equivalent in function and level of performance to the subject third party Software and implement such replacement at no cost to the HHSC; or (iii)  require the manufacturer or supplier of the subject third party Software to modify the subject third party Software so that it avoids the infringement claim, at no additional cost to the HHSC.  CONTRACTOR agrees to enforce its rights against such third party Software supplier or manufacturer to the maximum extent possible under its agreement with such supplier. CONTRACTOR further agrees that it will pass through such remedies to HHSC, on a pro-rata basis, to the same extent as CONTRACTOR recovers for and on behalf of its client base. CONTRACTOR’s agreements under this Section will not limit HHSC’s rights to enforce any remedies that it may have directly against a third party Software supplier.

Notwithstanding anything to the contrary contained in this Section f), if a substantial portion of the Software provided by CONTRACTOR hereunder is not proprietary to CONTRACTOR, the HHSC may require additional IP infringement indemnities in the SOW.

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 written notice from CONTRACTOR to cease using the goods, services or Deliverables because 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) Data Ownership and Access.**

a)The HHSC is and shall remain the full and exclusive owner of all right, title and interest in and to the Data including all intellectual property rights therein, and any data resulting from any Data analysis, aggregation, de-identification, processing or other manipulation that may be applied to Data and any data derived therefrom. Nothing in this Agreement shall be construed or interpreted as granting to CONTRACTOR any ownership or any other right, title or interest, including any license, in or to the Data.

b) The HHSC hereby grants to CONTRACTOR, for the term of this Agreement, a non-exclusive license to use and process Data for the sole purpose of, and to the extent necessary for, operating the Software and performing the Services hereunder. CONTRACTOR will not aggregate, anonymize, de-identify, or manipulate any Data or create any derivatives from the Data except as required to perform its obligations to the HHSC hereunder. Data use and processing as it relates to performing the Services required by HHSC will be more fully described in the SOW. CONTRACTOR will not collect or use any Data for its own purposes or advantage, nor for the purposes or advantage of any other person (whether natural person or other legal entity), including Data aggregation or Data de-identification.

c) For hosted services (ASP, SaaS or any other situation where data will be held or controlled by CONTRACTOR, as identified in the Statement of Work),the HHSC will have reasonably unrestricted access to, and the right to review and retain the entirety of, Data contained in the CONTRACTOR’s system or otherwise held by CONTRACTOR, including all computer or other files containing Data. At no time will any such files be stored or held in a form or manner not immediately (if retained online) or promptly (if retained in another medium) accessible to the HHSC. CONTRACTOR will provide to the HHSC all passwords, codes, comments, keys and documentation necessary for such access and as necessary to utilize such hosted services. This data access will normally be provided at the user-level view point, with any necessary access by HHSC at the datafile or systems file level being arranged on a mutually agreed, coordinated basis in order to be done in a way that is not disruptive to the operational systems.

**11) Restrictions**: HHSC’s use of the CONTRACTOR’s Software is restricted as follows:

a) The license granted herein is granted to the HHSC entities listed in the definition of “Facility” in Scope of Services and as defined in Section 4 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 Statement of Work documents. Under no circumstance will a qualified user be denied access to the Software, when that user represents an increase over the maximum number of users authorized. CONTRACTOR will specify in its Proposal how it counts users and what the procedure is for allowing larger number of users on the Software than specified in the original agreement. In addition, HHSC agrees that increasing the maximum number of users of the Software may also require increased hardware resources and operational capacity, the costs of which are to be borne by HHSC.

 b) 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 RFP 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.

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

**12) CONTRACTOR’s Retained Rights:** Subject only to the rights granted to HHSC hereunder, CONTRACTOR and its suppliers and licensors retain 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.

**13) Support or Maintenance Services:** This paragraph recites the general scope of maintenance and support services due under the license granted. Subject to payment of a Support Service or Maintenance Fee stated in **Attachment 3** for the first year and all subsequent years, if requested by the HHSC, CONTRACTOR agrees to provide the following support and maintenance services (as more fully described in the SOW, “Support Services”) for the current version and one previous version of the Software (subject to reasonable time limits as set forth in the SOW on how long HHSC can remain on an outdated version), commencing upon delivery of the Software: all upgrades, updates, new releases, new versions, error corrections and bug fixes (as further defined in the SOW, “Support Services”), as well as any successor or replacement products made generally available to CONTRACTOR’s other customers at no additional charge (collectively referred to as “Updates”); regulatory updates at no additional charge (except for material program changes due to changes in applicable laws or regulations for which additional charges may be assessed, allocated across all applicable CONTRACTOR customers, in such amounts or at such rates as the parties shall agree in the SOW); telephone assistance 24 hours a day, seven days a week; customary response time commitments and service level agreements (including uptime guarantees, downtime procedures and service credits); and temporary extensions of licenses to alternative CPUs.

This Paragraph will be supplemented by support and maintenance services terms included in the SOW.

**14) Termination of Support or Maintenance:** If the HHSC fails to pay Support or Maintenance fees 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, plus the support or maintenance fees that would have been due under the terms of Attachment 3 for the intervening period. 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.

**15) Software Retirement:** At any time after the seventh anniversary of this Agreement,CONTRACTOR retains the right to retire the Software and stop providing Updates or Services, upon providing 18 months advance written notice to the HHSC of its intent to do so, unless otherwise stated in the SOW. The decision to stop maintaining the Software in accordance with the preceding sentence is the sole business discretion of CONTRACTOR and shall not be deemed a breach of contract. During the term of support, if CONTRACTOR retires the version of the Software 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 Software that supports substantially the same functionality as the licensed version of the Software. HHSC will consider in the Statement of Work charges for implementation services for a newer version. New versions shall maintain the same interface functionality as the superseded version.

**16) Services Provided by CONTRACTOR:** CONTRACTOR shall provide the HHSC with implementation services as specified in a Statement of Work (“SOW”) executed by the parties. This Agreement in combination with each SOW individually comprises a separate and independent contractual obligation from any other SOW. A breach by CONTRACTOR under one SOW will not be considered a breach under any other SOW. The services intended hereunder are related to the HHSC’s implementation and/or use of one or more Software Deliverables licensed hereunder or in a separate software license agreement between the parties. CONTRACTOR shall install the Software and provide implementation services at the prices delineated in **Attachment 3** and in accordance with the preliminary implementation plan set forth in the Statement of Work. Such implementation services will fully enable the HHSC to use the Deliverables in productive use in accordance with the Specifications. CONTRACTOR understands that a timely implementation is essential to the HHSC. The implementation fees delineated in **Attachment 3** will cover all implementation services (including Software rollout, implementation, initial training, training materials, services to remedy Software problems, and other services identified in the implementation plan). As soon as reasonably possible, the parties will jointly create a detailed implementation plan which will replace the preliminary implementation plan in the SOW for all purposes of this Agreement. In no event will the detailed implementation plan provide for a lesser level or scope of services than the preliminary implementation plan in the SOW, nor for a delayed implementation, unless expressly agreed to by the HHSC in its discretion. CONTRACTOR will perform all Services in a professional and workmanlike manner.

**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 in accordance with **Attachment 3**. 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 and will be due no sooner than such anniversary date. 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) four percent (4%). 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 and Acceptance Criteria:** The SOW shall include processes and procedures for Acceptance Testing and Acceptance of the Deliverables, including applicable Standards of Performance for each Deliverable. The Acceptance process in the SOW shall include appropriate timeframes for Acceptance Testing of each Deliverable in a testing environment and use in live production for a reasonable period of time, and for final Acceptance Testing of the full HIS and EMR system comprised of the Deliverables, following testing  in a testing environment and use in live production for a reasonable period of time. Should the Deliverables fail to meet any specifications or acceptance criteria (including without limitation HHSC’s Standard of Performance), 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 or Standards of Performance during Acceptance Testing may be rejected. If the CONTRACTOR fails to promptly cure the defect or replace the Deliverables, the HHSC reserves the right to cancel the Agreement or applicable purchase order for a full refund of all amounts paid. In the event that the parties agree that Acceptance Testing is not applicable for a Deliverable, the Date of Installation shall be the Acceptance Date.

**19) Warranty Terms:**

a) Notwithstanding anything in this Agreement or Exhibit hereto to the contrary, CONTRACTOR shall pass through or assign all assignable warranties for any Deliverable supplied by a third party to the HHSC, or shall include such third party Deliverable in its own warranty, as specified in the SOW.

b) CONTRACTOR warrants that any Software or Deliverable will operate substantially in conformity with the Specifications and prevailing specifications as defined by the current standard Documentation (except for minor defects or errors which are not material to the HHSC) for ninety (90) days following the Date of Acceptance (“Warranty Period”), unless otherwise specified in the RFP 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, replace the Software, or if the deficiencies cannot be corrected through such efforts, at the HHSC’s option, refund the price paid for such Software. 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 the Specifications.

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

 i) Limited to the CONTRACTOR’s knowledge with respect to any Deliverables that are not proprietary to the CONTRACTOR, the licensed Software does not infringe any intellectual property rights of any third party; and

 ii) There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party that would prevent CONTRACTOR from performing its obligations or complying with the terms of this Agreement.

d) CONTRACTOR further represents and warrants as follows:

 i) CONTRACTOR shall correct malfunctions and errors in the Deliverable at no charge to HHSC provided that HHSC notifies CONTRACTOR before the end of the Warranty Period of any warranty failure. CONTRACTOR shall not be obligated to correct an error in a release or version of the Software if the error has been corrected in a more current release or version. CONTRACTOR provides no warranty for Open Source Software used other than as a part of the Application with which it was delivered.

 ii) Services. CONTRACTOR warrants that all services provided by CONTRACTOR under this Agreement will be performed in a professional, competent and businesslike manner.

 iii) Integration. CONTRACTOR warrants that, for the applicable Warranty Period, the Deliverables will operate together in accord with the applicable Documentation and Specifications.

 iv) Pass-Through of Warranties. CONTRACTOR warrants that, as to any Deliverables purchased by HHSC from CONTRACTOR: (a) such items will be ordered new from CONTRACTOR’ supplier(s) and will include any manufacturer’s standard end-user warranty; and (b) it shall pass through to HHSC all manufacturers’ end-user warranties.

 v) EDI Services Warranties. CONTRACTOR represents and warrants, as more fully set forth in, and as may be subject to such additional terms and conditions as the parties shall agree in, the SOW that: the Software will generate electronic transactions, as defined in the Health Insurance Portability and Accountability Act of 1996 and the regulations and guidance promulgated or issued now or in the future thereunder to (collectively, “HIPAA”), that comply with the standards of HIPAA and and other applicable standards and other requirements of state and federal law.

 vi) CONTRACTOR represents and warrants, as more fully set forth in, and as may be subject to such additional terms and conditions as the parties shall agree in, the SOW that: the applicable Software will generate electronic transactions, as defined in the Health Insurance Portability and Accountability Act of 1996 and the regulations and guidance promulgated or issued now or in the future thereunder to (collectively, “HIPAA”), that comply with the standards of HIPAA, and that each and every transaction performed via the Software or otherwise by CONTRACTOR hereunder will comply with the standards and other requirements of state and federal law, including HIPAA.

THE WARRANTIES IN THIS AGREEMENT 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.

**20) Escrow of Code**: Except to the extent that CONTRACTOR can provide source code availability options satisfactory to HHSC, then CONTRACTOR must establish an Escrow Agreement as further described in this section. CONTRACTOR has established an Escrow Agreement (“Escrow Agreement”) with a third party escrow agent acceptable to the HHSC, as required in the RFP, and has deposited in escrow, and thereafter on an ongoing basis so that the deposit in escrow remains fully consistent with the Software and documentation used by the HHSC, CONTRACTOR will deposit in escrow, the Software’s source code and such programming documentation, software tools, utilities, development automation software, and other code, materials and items used by CONTRACTOR’s programmers and contractors to compile, develop, test, maintain, and enhance such Software and as may be reasonably necessary for a reasonably skilled programmer to maintain and modify the Software (collectively, the “Deposit Materials”). Within thirty days from the Effective Date of the Agreement, CONTRACTOR will add the HHSC as a beneficiary to such Escrow Agreement. 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, (ii) CONTRACTOR no longer offers support or maintenance services for the Software, (iii) CONTRACTOR materially breaches its support or maintenance obligations under this Contract and such breach is not cured within thirty (30) days following written notice thereof and as a result, HHSC terminates this Agreement in its entirety, or (iv) CONTRACTOR liquidates its business or ceases to operate as a going concern (each a release condition (“Release Condition”) under 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. CONTRACTOR’s obligation to provide support and maintenance for the Software shall cease upon delivery of the Software source code to HHSC.

**21) Security:** 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. HHSC shall not provide to CONTRACTOR and its agents, if any, access to any information except as required to perform CONTRACTOR’s obligations under this Agreement.

**22) 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 agreement including, but not limited to, information systems access, use, storage, and disposal; provided that HHSC ensures that CONTRACTOR receives copies of all such policies and updates to such policies in advance of such policies applying to CONTRACTOR. 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 agreement, then HHSC will notify CONTRACTOR of such proposed change(s).

**23) Transition Services:**Notwithstanding any other provision of this Agreement, in the event the licenses granted hereunder are terminated, the HHSC shall be entitled to retain an archive copy of the Software in perpetuity, and the HHSC may copy, install and use such Software for the limited purpose of reconstructing its use of Software and Data processed, stored or displayed by the Software in response to any claims, actions, proceedings, or investigations brought against the HHSC by any third party, including without limitation any government agency: provided however, that CONTRACTOR will have no liability whatsoever for HHSC’s continued use of the Software post-termination. If CONTRACTOR is providing any hosted services, upon expiration or any termination of this Agreement or any of such hosted services provided hereunder, CONTRACTOR will provide the HHSC all Data stored on its servers or otherwise in the possession or control of CONTRACTOR in a CSV (comma-separated values) or flat-file, in a standard commercially acceptable form,or some other then-current nonproprietary format and media reasonably acceptable to the HHSC.

**24) Limitation of Liability for Software Deliverables**:

 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, maintenance, 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.

**25) CONTRACTOR Obligations:** For each SOW, CONTRACTOR will designate one (1) CONTRACTOR point of contact who shall be responsible for responding to the HHSC’s questions and issues relating to the Services.

**26) 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;

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.

**27) 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 RFP documents.

**APPENDIX F**

**PRICE PROPOSAL FORM – REMOTE HOSTING**

Please complete the table with the anticipated costs along with the questions that follow regarding the details of each category.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Item** | **One Time Cost (acquisition price)****List $ Discount $** | **Annual Fees (maintenance or recurring)****List $ Discount $** | **Annual % increase****List $ Discount $** | **# of years** | **TOTAL****List $ Discount $** |
| Software license (site license) |  |  |  |  |  |  |  |  |  |
| Third party licenses - infrastructure |  |  |  |  |  |  |  |  |  |
| Third party licenses - content |  |  |  |  |  |  |  |  |  |
| Third party licenses - tools |  |  |  |  |  |  |  |  |  |
| Product maintenance and support |  |  |  |  |  |  |  |  |  |
| \*Hardware |  |  |  |  |  |  |  |  |  |
| \*Remote hosting |  |  |  |  |  |  |  |  |  |
| Implementation |  |  |  |  |  |  |  |  |  |
| Consulting |  |  |  |  |  |  |  |  |  |
| Internal staff |  |  |  |  |  |  |  |  |  |
| Training |  |  |  |  |  |  |  |  |  |
| Data conversion |  |  |  |  |  |  |  |  |  |
| Disaster recovery and backup |  |  |  |  |  |  |  |  |  |
| Interfaces |  |  |  |  |  |  |  |  |  |
| Other one time and recurring costs |  |  |  |  |  |  |  |  |  |

Please note descriptions for items above:

**Software license** – the amount in total for the license or subscription; also indicate the recurring maintenance or annual subscription costs. Software license shall be a one-time perpetual site license, with ‘site’ being defined as any user who is an employee, affiliated physician or clinician, or an authorized contractor of HHSC.

**Third party licenses for infrastructure** – these are the costs associated with underlying software needed to run the application, such as database management systems, operating systems, etc.

**Third party licenses for content** (e.g., Zynx for clinical guidelines, First Data Bank for medication information); identify any recurring costs; also factor in the hardware line any servers required to support these tools.

**Third party licenses for tools** – sometimes report writers, statistical packages or other tools are required to fully utilize the application; these will have acquisition and ongoing maintenance or subscription costs; also factor in the hardware line any servers required to support these tools.

**Product maintenance and support** - the vendor must specify the price of the product maintenance and technical support services described in the proposal. If maintenance and support are priced separately, please make note of that. Subsequent renewals shall include price protection the ECI index for white collar workers or 4% , whichever is less.

**Hardware** – be sure to include replacement and upgrade costs, particularly when looking at a 10-year horizon; include all hardware needed for third party support applications; consider hardware needed for failover.

**Implementation** – third party fees for implementation over the course of the project; include travel, which can run 15-20% of the implementation fees.

**Consulting** – fees and travel for third party consultants, if needed, to support either the implementation directly or to support the legacy systems while our internal team is assisting with the implementation of the new application.

**Internal staff** – additional staff required to support a new application (e.g., implementing and supporting a net new application such as an EMR will require additional staff). Identify number of staff necessary to implement for the size of HHSC.

**Training** – costs for initial training; this can include both the out-of-pocket expenses to pay for the training (e.g., fees to the vendor, travel costs for your staff). Identify costs associated with implementation and education activities over and above your recommended program. Please indicate type of activity and cost per day. Please provide all additional costs associated with implementing a testing and training hardware/software environment.

**Data conversion -** the vendor should estimate the cost and number of days of assistance that will be required to convert key data from the practice’s paper charts. If the practice is converting from a different EMR system, the vendor should estimate the cost to convert data to the vendor’s system.

**Disaster backup and recovery** – the costs for adding the new system to HHSC’s disaster recovery plan (e.g., hot site backup for critical clinical systems).

**Interfaces** – the costs of applicable interfaces in terms of software, installation, support, and usage charges. If interface costs are consistent between interface types, please simply indicate cost of unidirectional and bidirectional interfaces.

**Other** – please note other costs not previously identified in the table that are either upfront/onetime costs or recurring costs. Identify any ongoing transaction based costs.

|  |  |
| --- | --- |
| **Question** | **Description and Comments** |
| 1. Please identify all software components that are separately priced.
 |   |
| 1. Explain how each component is licensed. Is there a base license fee? Are there concurrent-use license options? Are there distinctive license types for distinctive roles: physicians, mid-levels, RNs, schedulers, etc.? Is there an unlimited license pricing option? Are there price breaks at different user # levels? Are there price breaks for low volume practices?
 |   |
| 1. Please articulate a complete list of all your licensing options/methodologies. Include associated pricing and/or payment options.
 |   |
| 1. How do you handle licensing for a single organization that has multiple facilities (i.e. hospitals, clinics)?
 |   |
| 1. If you have more than one support option, please identify each such option and related costs if not previously included. If support/maintenance costs can be defined in terms of a percentage of the software purchase price, then a percentage will be adequate.
 |   |
| 1. If the defined ongoing costs do not include costs for all ongoing software updates, please indicate and identify such costs.
 |   |
| 1. Describe your recommended implementation and education program (including whether implementation and education activities are onsite, remote, or require travel to another location) included in the costs.
 |   |
| 1. Please identify the associated custom report development, conversion, programming and related work associated with the costs provided.
 |   |
| 1. Please indicate whether you provide a server solution for the HIS/EMR implementation.
 |   |
| 1. If you provide such a solution, please indicate both the capital and ongoing support costs of the solution.
 |  |
| 1. Are there any database or operating system costs that are required for the solution?
 |  |
| 1. Please scope hardware capacity.
 |  |
| 1. If you provide a hardware solution, please indicate whether you provide any high availability options for the configuration (such as a redundant server data replication solution, or a remote archive disaster recovery service).
 |   |
| 1. If you provide a solution/service in Item 13, please identify all associated costs.
 |  |
| 1. Whether or not you provide a hardware solution, please indicate the server and storage specifications for your software solution. Please provide enough information so that we can work with hardware OFFERORS to develop estimated costs of the hardware configuration, including any associated database or OS related costs.
 |   |
| 1. Please identify anticipated storage capacity and hardware requirement specifications for the HHSC HIS/EMR.
 |   |

APPENDIX G

**ATTESTATION OF CONTRACTUAL RELATIONSHIP**

If awarded the contract, I, (Name of Offeror), will utilize a subcontractor to provide some of the goods and/or services set forth in the **“**Health Information System (HIS) & Electronic Medical Records System (EMR) Request for Proposal”. I will accept responsibility for the subcontractors’ performance.

I certify that the subcontractor names listed below or attached to this letter have an existing contract with (Name of Offeror) to provide the following goods/services outlined in the specified portions of the proposal:

|  |  |  |
| --- | --- | --- |
| **Subcontractor** | **Description of goods/services** | **Section of proposal** |
| 1. |  |  |  |
| 2. |  |  |  |
| 3. |  |  |  |
| 4. |  |  |  |
| 5. |  |  |  |
| 6. |  |  |  |

APPENDIX H

FUNCTIONAL REQUIREMENTS CHECKLIST

See separately attached Appendix H