

REQUEST FOR PROPOSALS

RFP No:
HHSC FY21-001

COMPETITIVE SEALED PROPOSALS
TO PROVIDE:

Twenty-Four Hour Emergency Physician Services for the Kona
Community Hospital and Kohala Hospital Emergency
Departments

for

Hawaii Health Systems Corporation

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

Digital Proposal Submission Deadline

November 19, 2020 4 p.m. HST

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SECTION 1

ADMINISTRATION

1.0 INTRODUCTION

This Request for Proposal (hereinafter “RFP”) is issued on behalf of the West Hawaii Region of the Hawaii Health Systems Corporation (hereinafter “HHSC”), a public body corporate and politic and an instrumentality and Agency of the State of Hawaii. This solicitation is governed by the provisions of Hawaii Revised Statutes (“HRS”) and its implementing rules. All procedures and processes will be in accordance with applicable HRS Chapters including, but not limited to 323F. To the extent this solicitation contains any terms or provisions inconsistent with HRS Chapters and implementing rules, the statutes and the rules will control.

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

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

1.1 RFP TIMETABLE AS FOLLOWS

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

| ACTIVITY | | SCHEDULED DATES |
|----------|--|--|
| 1. | RFP Public Announcement | October 29, 2020 |
| 2. | Closing Date for Receipt of Questions | November 5, 2020 |
| 3. | Addendum for HHSC Response to OFFEROR’S Questions | November 12, 2020 |
| 4. | Closing Date for Receipt of Digital Proposals | November 19, 2020 - No Later Than 4:00 p.m., HST |
| 5. | Mandatory Requirements Evaluation | November 19-20, 2020 |
| 6. | Proposal Evaluations | November 20 – December 11, 2020 |
| 7. | Proposal Discussions (optional) | December 14-15, 2020 |
| 8. | Best and Final Offers (optional) | December 14-15, 2020 |
| 9. | Contractor Selection/Award Notification (on/about) | December 16, 2020 |
| 10. | Contract Execution Period | December 16, 2020 |
| 11. | Contract Tentative Award Date | December 16, 2020 |

1.2 AUTHORITY

This RFP is issued under the applicable provisions of the HRS Chapters including, but not limited to 323F, and its administrative rules. All OFFERORS are charged with presumptive knowledge of all requirements of the cited authorities. Submission of a valid executed proposal by any OFFEROR shall constitute admission of such knowledge on the part of such OFFEROR.

1.2.1 RFP Organization

This RFP is organized into five sections:

SECTION 1: ADMINISTRATIVE

Provides information regarding administrative requirements.

SECTION 2: SCOPE OF SERVICES

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

SECTION 3: PROPOSALS

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

SECTION 4: EVALUATION

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

SECTION 5: AWARD OF CONTRACT

Describes procedures for selection and award of contract.

1.3 HEAD OF PURCHASING AGENCY (“HOPA”)

The HOPA for HHSC, or designee, is authorized to execute any and all Agreements (sometimes referred to herein as “Contract”), resulting from this RFP.

The HOPA’s Designee for this RFP is:

James Y. Lee
CEO, West Hawaii Region (RCEO)
Hawaii Health Systems Corporation

1.4 DESIGNATED OFFICIALS

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

1.4.1 Issuing Officer

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

Alison Stransky, Sr. Corp. Contracts Manager
HHSC
3675 Kilauea Avenue, Honolulu, HI 96816
PH: (808) 772-1427
Astransky@hhsc.org

1.5 HHSC ORGANIZATIONAL INFORMATION

1.5.1 Charter

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

1.5.2 Structure And Services

HHSC currently owns and operates nine public health hospitals, plus their associated clinics, throughout the Hawaiian Island chain, including Oahu, Kauai and Hawaii. In addition to the nine hospitals, Kahuku Medical Center, Hawaii Health Systems Foundation and Ali'i Health Center are 501(c) (3) affiliates and are wholly owned subsidiaries.

HHSC is organized into four operational regions and provides a broad range of healthcare services including acute, long term, rural and ambulatory health care services. HHSC has approximately 2000 employees and operates 760+ licensed beds of which 302 are acute and 486 are designated long-term care. It is important that OFFERORS are aware that HHSC is made up of multiple regions and provider types, and that some regions are geographically separate from another (access only by plane or boat between some regions).

The HHSC West Hawaii Region is comprised of two hospitals; Kona Community Hospital and Kohala Hospital. Kohala Hospital, located in the rural town of Kapaau, is a 24-bed Critical Access Hospital (CAH) with 24-hour emergency services, proudly serving the North Kohala community for over 100 years. Kona Community Hospital is a 94-bed full-service acute care hospital with 24-hour emergency services. Both hospitals are private, public benefit healthcare facilities accredited by the Joint Commission.

1.5.3 Mission

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

1.6 FACILITY INFORMATION

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

1.7 SUBMISSION OF QUESTIONS

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

- IMPORTANT -

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

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

Responses by HHSC shall be due to the OFFEROR no later than the dates for initial questions and final questions stipulated in Section 1.1.

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

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

SEND QUESTIONS TO:

Alison Stransky, Sr. Corp. Contracts Manager
Email: Astransky@hhsc.org

1.8 SOLICITATION REVIEW

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

1.9 RFP AMENDMENTS

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

1.10 CANCELLATION OF RFP

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

1.11 GREIVANCE

It is the policy of the West Hawaii Region to work cooperatively with all OFFERORS to achieve fair and fiscally sound procurement decisions. In the event an OFFEROR feels that a procurement decision has been determined, or is about to be determined, that is not in accordance with applicable law or policies, the OFFEROR is encouraged to proceed as follows:

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

If the debriefing does not satisfy the OFFEROR a meeting may be requested with the Issuing Officer who may invite others to participate as needed.

If the Issuing Officer does not resolve the issue, the OFFEROR may request a meeting with the RCEO. The RCEO is the last recourse for disputes relating to procurement decisions and all decisions made by the RCEO shall be final.

Deadline: A grievance 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; provided further that the grievance shall not be considered unless it is submitted in writing prior to and not later than the "Closing Date for Receipt of Questions" identified in Section 1.1.

Deadline: A grievance based upon an award or proposed award shall be submitted within **five (5) working days** after the posting of award of the contract. The notice of award, if any, resulting from this solicitation shall be posted on the Kona Community Hospital website:

<http://www.kch.hhsc.org/Procurement/>

Any and all grievances shall be submitted in writing to the RCEO, as follows:

James Y. Lee
CEO, West Hawaii Region
Kona Community Hospital
79-1019 Haukapila Road
Kealahakua, Hawaii 96750
JLee@hhsc.org

SECTION 2

SCOPE OF SERVICES

2.0 INTRODUCTION

The purpose of this competitive solicitation is to award a single, *exclusive*, fixed-priced Agreement for OFFEROR to staff and operate the Emergency Departments of Kona Community Hospital and Kohala Hospital, twenty-four (24) hours per day, seven (7) days per week.

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

2.1 CONTRACT PERIOD

- 2.1.1 The Agreement shall be effective upon the date of full execution by the parties and will be for an initial term of 24 months. The “Go-live” date shall be mutually agreed upon in writing and must occur within sixty (60) days of the effective date. The OFFEROR shall include an estimated “Go-live” date for each of the two hospitals in their Technical Proposal.
- 2.1.2 The Agreement may be extended for three (3), one (1) year option periods at the sole discretion of HHSC. The initial term and option periods shall not exceed a period of five (5) years. The terms and conditions of any such contract extension shall remain the same as the original contract, as amended.
- 2.1.3 If the CONTRACTOR chooses not to exercise any available option period under the Agreement, the CONTRACTOR shall provide the Contracting Officer written notice of its intent not to renew this contract at least 180 days before its expiration. If the CONTRACTOR fails to provide the 180 day notice prior to expiration, the CONTRACTOR shall be liable for all additional costs incurred by HHSC to transition to another contractor due to the shortened notice period.

2.2 CONTRACTOR’S RESPONSIBILITIES. The CONTRACTOR shall provide physician, medical director and advanced practice emergency room services to Kona Community Hospital and Kohala Hospital (hereinafter “HOSPITAL” or “HOSPITALS”) as described in the SCOPE OF SERVICES for the term of this Agreement.

2.2.1 Retaining Current Physicians. The awarded CONTRACTOR shall actively recruit employed or contracted physicians (hereinafter “PHYSICIAN” or “PHYSICIANS”) currently providing the requested services at HOSPITAL(S), and offer the PHYSICIANS the right of first refusal to provide services under this Agreement.

2.2.2 Provide on-call emergency room physician services, consisting of a qualified doctor of medicine or osteopathy. A PHYSICIAN shall be immediately available and capable of responding to emergency calls by telephone or radio contact twenty-four hours per day, seven days per week, and 365 days per year. PHYSICIAN must be onsite at the HOSPITAL within thirty (30) minutes to provide emergency medical assessment, treatment and disposition to inpatients or to persons who come to the HOSPITAL with an emergency medical condition, as defined in the Federal Emergency Medical Treatment and Active Labor Act (EMTALA).

2.2.3 Provide a doctor of medicine or osteopathy who shall be designated as the Medical Director for ER services (hereinafter “MEDICAL DIRECTOR”) and shall be available to provide immediate consultation with all medical, physician, and HOSPITAL staff at all times. The MEDICAL DIRECTOR shall work approximately eighteen (18) hours per month. Monthly duties shall include:

- A. Monitor and participate in the review of all aspects of the HOSPITAL's Emergency Department services in conjunction with the medical staff multi-disciplinary review process, Continuous Quality Improvement (C.Q.I.), Quality Assurance (Q.A.), Centers for Medicare and Medicaid Services (CMS) regulations and State licensing requirements.
 - B. Advise and assist in assessing the adequacy of facilities, equipment and/or manpower, in meeting certification requirements as established by CMS and State licensing requirement and in meeting standards of quality control.
 - C. Provide, as needed, written recommendations to the HOSPITAL's Administrator, with appropriate justifications, for the acquisition of equipment and/or supplies required to further enhance or improve the provision of emergency services to the community.
 - D. Participate in the presentation of reviews and evaluations at the HOSPITAL's medical staff meetings and assist in planning the work of the PHYSICIANS as required for certification by CMS and State licensing regulations.
 - E. Chair and/or sit on HOSPITAL committees as requested by HOSPITAL Administration or Medical Staff for the purpose of maintaining acceptable standards of medical practice and as required by CMS, State licensing regulations and other certifying agencies, for the purpose of delivering the best possible medical care.
 - F. Establish and conduct a program of in-service training sessions for the continuing medical education of all personnel in the HOSPITAL's Emergency Department, and for other HOSPITAL employees who wish to participate. The educational sessions may be conducted on-site at the HOSPITAL, or off-site, but on the Island of Hawaii.
 - G. Establish clear physician communication protocols with change of scheduled shift.
 - H. Submit to the HOSPITAL's Administrator, a "Monthly Summary of Services Provided" report documenting in accordance with CMS, State Medicaid program requirements, and private insurance requirements, the hours dedicated each month in providing the above indicated services.
 - I. Support the facility in meeting State Trauma Services Goals for Hawaii Island.
- 2.3 The PHYSICIAN on duty shall provide appropriate medical screening examination to any person presented to the HOSPITAL's Emergency Room for triage and if appropriate, provide treatment for such patient. If required care cannot be provided at the HOSPITAL, PHYSICIAN and HOSPITAL staff on duty shall stabilize the patient's medical condition and arrange for a transfer to another facility as appropriate. If a patient's condition is treated in the HOSPITAL'S Emergency Room but requires hospitalization, and the HOSPITAL has the appropriate resources, the patient shall be admitted.
- 2.4 CONTRACTOR acknowledges that Kohala Hospital, as a critical access hospital (CAH), must meet all of the relevant conditions of participation for CAHs as set forth in 42 CFR Part 485 Subpart F. Section 620(b) of that Subpart requires that a CAH provide "acute inpatient care for a period that does not exceed, on an annual average basis, 96 hours per patient." CONTRACTOR agrees to cooperate with and assist HOSPITAL, to the extent allowed by law, for the HOSPITAL to meet the relevant conditions of participation for CAHs.
- 2.5 Provide such medical assessment, treatment and care in accordance with procedures which meet all of the applicable professional standards of care, including the Standards of Practice of Emergency Medicine as established by the American College of Emergency Physicians.
- 2.6 Provide and ensure that the CONTRACTOR's MEDICAL DIRECTOR and the PHYSICIANS who provide on-call services hereunder are qualified and experienced in emergency care and shall at all times be active and in

good standing and whose credentials at any time shall not be restricted, made conditional, or suspended, summarily or otherwise:

- A. A valid license to practice medicine in the State of Hawaii;
- B. Board certification in a primary care specialty with recent emergency room experience; Medical Director will be board certified in emergency room services;
- C. Staff privileges and credentials necessary to work at the HOSPITAL;
- D. Compliance with all Mandatory Continuing Education (MCE) requirements imposed by the State of Hawaii and the HOSPITAL
- E. Have at least three (3) years of experience, or the completion of a postgraduate training program in an acceptable medical specialty, relevant to performing services under this Agreement.
- F. Possess and maintain a current Advance Cardiac Life Support (ACLS) and Pediatric Advanced Life Support (PALS) certification and other certification(s) as deemed necessary by the medical staff rules and bylaws.

2.7 The CONTRACTOR further understands and agrees as to the respective rights and obligations as follows:

- 2.7.1 Discharge and Referral. If, after appropriate assessment and examination, the PHYSICIAN determines in the exercise of PHYSICIAN's sound medical judgment that the patient's emergency medical condition, if any, is sufficiently stabilized and the patient no longer requires emergency medical care, the PHYSICIAN may discharge and/or refer such patient to the patient's physician for treatment.
- 2.7.2 Subsequent Inpatient Service. If, after appropriate assessment and examination, the PHYSICIAN determines in the exercise of the PHYSICIAN's sound medical judgment that the patient requires inpatient services following emergency medical treatment and care, the PHYSICIAN shall determine in collaboration with hospitalist the appropriate level of care facility. (HOSPITAL is currently supported 24-hours per day, 7 days per week, 365 days per year by a contracted hospitalist group.) If appropriate for admission to HOSPITAL, referral to the hospitalist for further inpatient care will be made. The patient's regular attending physician will be informed of the admission. If the appropriate admission is to another facility, ER physician will manage the transfer of the patient. Note: Hospitalist group for Kohala Hospital is Mango Medical, hospitalist group for Kona Community Hospital is Sound Physicians of Hawaii, Inc.
- 2.7.3 Treating Patient Who Has Own Physician. If the PHYSICIAN, in the exercise of PHYSICIAN's sole and sound medical judgment, determines that it is medically necessary to examine and treat a patient who otherwise has his or her own regular physician, the PHYSICIAN may provide such necessary examination and treatment.
- 2.7.4 Medical Responsibility for Care. Upon medically appropriate discharge or referral under section 2.7.1-2.7.3 above, the medical responsibility for the care of the patient passes to the physician who assumes the care of the patient, and the PHYSICIAN shall then no longer be medically responsible for the subsequent care of that patient.
- 2.7.5 Service under Physician Order. The PHYSICIAN is not obligated under this Agreement to, and shall not, provide any services in the emergency medical facility to any patient, where such service is under the orders of any kind or nature whatsoever, of the patient's physician.
- 2.7.6 Patient of Staff Physician. The PHYSICIAN shall notify any staff physician of the HOSPITAL to update him or her on their own patient that presents to the Emergency Room.

- 2.7.7 Patients' Best Interest. The PHYSICIAN shall at all times during the performance of this Agreement act in the best interests of the patients and promote the best interests of the HOSPITAL.
- 2.7.8 Other Controlling Documents. The PHYSICIAN shall at all times during the performance of this Agreement comply with the bylaws and the rules and regulations of the medical staff of the HOSPITAL, the rules and regulations of the HOSPITAL, policies and procedures of the medical staff and of the HOSPITAL (collectively, "bylaws and rules and regulations"), and all state and federal laws and administrative regulations. Notwithstanding any provision in this Agreement to the contrary, this Agreement is not intended by the CONTRACTOR or HOSPITAL to, and does not, alter or otherwise affect any of the obligations of a medical staff member under the bylaws and rules and regulations; where there is any conflict between any of the terms of this Agreement and the bylaws and rules and regulations, the terms and provisions of the bylaws and rules and regulations shall control.
- 2.7.9 CONTRACTOR or PHYSICIAN's Responsibility. The CONTRACTOR or PHYSICIAN shall not be held responsible for the acts of the HOSPITAL's employees and other physicians utilizing the emergency room over which the CONTRACTOR or PHYSICIAN exerts no control.
- 2.8 The HOSPITAL may at its discretion review the performance of the PHYSICIAN. Within seventy-two (72) hours of CONTRACTOR's receipt of written notification of concerns relating to the performance of a PHYSICIAN, CONTRACTOR shall resolve any such concerns to the reasonable satisfaction of the HOSPITAL. This requirement is independent of and in addition to the peer review process set forth in the Medical Staff By-laws.
- 2.9 The CONTRACTOR, in a timely and accurate manner, shall provide the HOSPITAL written reports it requests regarding PHYSICIAN services provided.
- 2.10 The CONTRACTOR shall ensure the PHYSICIAN promptly submits to the HOSPITAL's medical records administrator and/or patient's private physician, written reports of all examinations, treatments, and procedures provided pursuant to this Agreement. CONTRACTOR and PHYSICIAN shall use the medical records and report forms provided by the HOSPITAL. CONTRACTOR further agrees that all records and reports required by this Section shall be the exclusive property of the HOSPITAL.
- 2.11 CONTRACTOR shall ensure that their PHYSICIANS submit all medical records through HOSPITAL's EMR system. HOSPITAL shall provide sufficient training for all of CONTRACTOR's PHYSICIANS to ensure their knowledge and understanding of the EMR system. Cerner Soarian is currently in use at HOSPITAL.
- 2.12 Professionalism. CONTRACTOR's PHYSICIANS are expected to promote a positive work environment through behavior that demonstrates a commitment to HHSC's mission, vision and values. Behaviors that demonstrate HHSC's values of trust, respect, integrity, and mindfulness will promote better patient care and encourage long-lasting, meaningful relationships among all HOSPITAL staff, and increase both employee and patient engagement. Intimidating and disruptive behaviors can foster medical errors, contribute to poor patient satisfaction and engagement, and contribute to preventable adverse outcomes. The HOSPITAL Administration and/or outside organizations will periodically survey staff, patients, and other providers to determine whether the CONTRACTOR's PHYSICIANS are meeting the HOSPITAL'S mission, vision, and values and are in compliance with the policies and expectations listed in 2.11.1 and 2.11.2 below. The CONTRACTOR's PHYSICIANS will be given feedback and if improvement is deemed by the HOSPITAL Administration, in its sole discretion, to be needed the CONTRACTOR's PHYSICIANS shall be expected to alter their behavior to come into compliance with these policies and expectations.
- Unprofessional conduct that continues after organizational efforts to correct it are unsuccessful may result in termination of this Agreement as provided for under its terms and conditions. The HOSPITAL shall have sole authority to decide whether the CONTRACTOR's PHYSICIANS have successfully remediated their unprofessional conduct and the decision of the HOSPITAL shall be final. Additional policy violations and

non-clinical unprofessional conduct will be investigated by the HOSPITAL's Human Resources Department and/or outside organizations. Unprofessional conduct that raises clinical concerns will be addressed by the Medical Staff Office and referred to the RCEO.

For purposes of this Section 2.11, "Unprofessional Conduct" means any of the following:

2.12.1. Disruptive behavior, as defined by the West Hawaii Region Code of Conduct means anything a person does that interferes with the orderly conduct of HOSPITAL business. Disruptive behavior includes, but is not limited to, the following actions:

- A. Physically threatening anyone in the work environment;
- B. Verbal outbursts;
- C. Making threatening or intimidating physical contact with another person;
- D. Throwing things, instruments, or charts;
- E. Threatening violence or retaliation;
- F. Sexual and other harassment;
- G. Making belittling, sarcastic or condescending statements regarding HHSC or its employees;
- H. Calling people names;
- I. Using profanity;
- J. Blatantly failing to respond to patient care needs or staff requests;
- K. Deliberately failing to return calls, pages, and messages.

2.12.2. A violation of any of the following policies that guide our conduct:

- A. HHSC ADM 0032 - Workplace Disruptive Behavior No Tolerance Policy;
- B. TJC Sentinel Event Alert No. 40 – Behaviors that Undermine a Culture of Safety.

2.13 The parties to this Agreement certify that they shall not violate the Anti-Kickback Statute or the Stark Law with respect to the performance of this Agreement.

2.14 The PHYSICIAN shall provide written notice to HOSPITAL's Medical Staff Office upon receipt of notification that the PHYSICIAN has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity. The Medical Staff Office may, upon receipt of such written notice, direct Contracting Officer to immediately terminate this Agreement if the Medical Staff Office or HHSC determine that the PHYSICIAN has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body.

2.15 HOSPITAL'S RESPONSIBILITIES

2.15.1 Call Room. The HOSPITAL shall provide an indoor area used as a call room by the PHYSICIAN during on-call duty hours. While it is not a requirement for the PHYSICIAN to reside onsite, the HOSPITAL will make available one (1) room for the PHYSICIAN on-duty to use to enable him or her to comply with on-call requirements.

2.15.2 Telephone Access. The HOSPITAL shall allow the PHYSICIAN access to and use of the HOSPITAL's telephone at no charge to receive standard incoming and place outgoing local calls. The CONTRACTOR shall reimburse the HOSPITAL for all incoming collect calls the CONTRACTOR or PHYSICIAN accepts and outgoing long distance calls made by the CONTRACTOR or PHYSICIAN not directly related to patient care.

2.15.3 Disclosure for Payment Process. The HOSPITAL shall allow access to and use of its records, including patient records, necessary for the CONTRACTOR to accurately bill for professional services provided by the

PHYSICIAN. Any such disclosure and use shall be subject to all applicable requirements and restrictions set forth in 45 CFR Part 160 and 164, as amended from time to time.

2.15.4 Electronic Medical Records (EMR) System. HOSPITAL shall provide sufficient training to CONTRACTOR's staff. HOSPITAL shall provide all necessary equipment for the use of the EMR. All medical records shall be entered into the EMR system and HOSPITAL shall maintain the system for all users.

2.15.5 Equipment and Supplies. HOSPITAL shall provide and maintain all equipment, drugs, supplies, furniture, and fixtures for the use by PHYSICIAN as necessary for the proper functioning of an emergency room or are required by federal, state and local laws, regulations and ordinances.

2.16 CONTRACTOR BILLING AND COLLECTIONS for ER Professional Services

2.16.1 The CONTRACTOR shall perform billing and collection of all charges for professional medical services rendered by its staff for the Emergency Room. CONTRACTOR shall bill patients and third party payers for the professional fees at own expense and under its own provider number. **The parties shall execute a Data Use Agreement and/or a Business Associate Addendum** describing the flow of patient data and the required types of access for CONTRACTOR and any third-party billing entities. HOSPITAL shall perform billing and collection of all other charges, including but not limited to, facility fees.

2.16.2 The CONTRACTOR shall accept current year Medicare rates as payment in full for medical care provided to HOSPITAL employees and for other patients whose bills are being paid by the HOSPITAL.

2.16.3 The HOSPITAL shall make available to CONTRACTOR, in a practical manner consistent with current practices, legible copies of all records and other supporting documentation necessary for the accurate billing of patients for professional services provided by CONTRACTOR and its staff pursuant to this Agreement

2.17 TECHNICAL REPRESENTATIVE

The Technical Representative shall have the right to oversee the successful completion of contract requirements, including monitoring, coordinating and assessing CONTRACTOR's performance; and approving completed work/services with verification of same for CONTRACTOR's invoices. The Technical Representative also serves as the point of contact for the CONTRACTOR for "Technical" matters (non-contractual) from award to contract completion. The Technical Representatives for this agreement are:

Kona Community Hospital: TBD

Kohala Hospital: TBD

SECTION 3

PROPOSALS

3.0 INTRODUCTION

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

3.1 PROPOSAL PREPARATION

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

- A. The technical category information identified in Section 3.7 below.
- B. The price category information identified in Section 3.8 below.

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

Prepare DIGITAL proposals organized into distinctive sections, corresponding with the technical and price categories and other categories, as appropriate. **PLEASE NOTE: THE HHSC EMAIL SERVER CANNOT ACCOMMODATE ANY FILE SIZE THAT EXCEEDS (TEN) 10MB. PLEASE CREATE MULTIPLE, SMALLER SIZED DIGITAL DOCUMENTS IN ORDER TO ADDRESS THIS CONSTRAINT.** The development of overly elaborate proposals and presentation material, not required and/or related to RFP requirements, is **HIGHLY DISCOURAGED**. This procedure will facilitate proposal evaluations.

3.2 COSTS FOR PROPOSAL PREPARATION

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

3.3 DISQUALIFICATION OF PROPOSALS

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

- ATTENTION -

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

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

- Proof of collusion among OFFERORS, in which case all proposals involved in the collusive action will be rejected.
- The OFFEROR’S lack of responsibility and cooperation as shown by past work or services.
- The proposal shows any noncompliance with applicable law.
- The proposal is conditional, incomplete, or irregular in such a way as to make the proposal incomplete, indefinite, or ambiguous as to its meaning.
- The proposal has any provision reserving the right to accept or reject award, or to enter into a contract pursuant to an award, or provisions contrary to those required in the solicitation.
- Proof of exclusion from participation in federal health care programs, as defined in the Social Security Act (Sections 1128 and 1128A), and other federal laws and regulations relating to health care.

3.4 SUBMISSION OF PROPOSALS

Each OFFEROR may submit only one (1) digital proposal (which includes a digital technical proposal and a digital price proposal). OFFEROR may submit by sending multiple emails if necessary to accommodate the 10MB file size constraint. Alternate proposals will not be accepted. The Issuing Officer must receive one (1) digital, emailed proposal no later than the “Closing Date for Receipt of Proposals”, identified in Section 1, subparagraph 1.1. **Proposals received after this time/date may be rejected.** Email to Alison Stransky at Astransky@hhsc.org.

The subject line of the email(s) containing the proposal should be:

“Proposal for RFP FY21-001”

3.5 PROPOSAL TRANSMITTAL COVER LETTER

OFFEROR is required to submit proposal with a transmittal cover letter. The transmittal cover letter must be on the OFFEROR’S official business letterhead; signed by an individual authorized to legally bind the OFFEROR; affixed with the corporate seal or notarized; and minimally include information, as written/requested, on the “sample” letter in Section 5, APPENDIX A.

3.6 PUBLIC INSPECTION

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

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

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

3.7 TECHNICAL PROPOSAL

The technical proposal shall include the following categories:

- SUMMARY

- EXPERIENCE & EXPERTISE OF FIRM/KEY PERSONNEL
- METHOD OF APPROACH TO SCOPE OF SERVICES

3.7.1 Summary

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

3.7.2 Experience and Expertise of Firm

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

- A. Background of the Company, i.e., services offered, size, resources, years in business, location, State of Hawaii presence, state of incorporation, etc.
- B. Brief description of Company's qualifications to perform Scope of Services requirements.
- C. Brief description of three (3) past and/or present contracts demonstrating Company's qualifications, experience and performance. Include customer name, contact name and telephone number. If not available, provide contact name and telephone number of three (3) references that can discuss your Company's qualifications, experience and performance.
- D. Company financial statements for the past two years, preferably audited, or a copy of filed tax returns. Certified Balance & Income Statements are acceptable; keep documentation simple/limited. This requirement is mandatory. All submitted financial documents shall be secured by HHSC and reviewed by the Regional Chief Financial Officer only. No financial documents shall be disclosed to the public.
- E. Identification of litigation currently impacting the Company, if any. State "NONE", if none.

3.7.3 Key Personnel

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

- A. Company's managerial organizational chart and resumes of key positions.
- B. Key personnel identified to perform services, including: name, years of experience, years with the Company, qualifications and verifiable references (with contact telephone numbers), if any. Please identify the number of physician full-time employees (FTE) and the number of any advanced practice FTE's.
- C. Please include the name/contact information for the CONTRACTOR's Risk Manager.

3.7.4 Method of Approach to Scope of Services

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

- A. Assignment and management of personnel.
- B. Coordination of requirements with HHSC personnel.
- C. Problems anticipated, if any.

3.8 PRICE PROPOSAL

HOSPITAL desires to enter into an Agreement through which CONTRACTOR shall be solely compensated by revenues from patient billing and collections, and will not require a subsidy from HOSPITAL. Historically, Kona

Community Hospital has never paid a subsidy to the contracted emergency services provider. If OFFEROR believes that a subsidy is needed then OFFEROR is to provide information and documentation as to why a subsidy is required based upon the services rendered, and the collections anticipated from the direct patient care services. OFFEROR must provide its compensation information to be paid for the professional services and the deficit between actual collections and the amount to be paid for the professional services. Please note: Proposals seeking a subsidy will be assessed by an independent, third-party to determine if such subsidy is defensible from a fair market value perspective. If a subsidy is not requested then no fair market value analysis is needed as HHSC is giving an “exclusive franchise” for SERVICES in exchange for 24/7 coverage, which is fair market value.

The price proposal shall include the following categories:

- A. SUMMARY
- B. SUMMARY OFFER

3.8.1 Summary

Pricing for **Kona Community Hospital** for Twenty-Four (24) months shall be as follows:

- A. Offeror submits an amount of

\$_____ per month for providing the SERVICES required under the Scope of Services contained in this Agreement. This fee shall be inclusive of all taxes and expenses incurred. Taxes related to collections are not to be passed on to the HOSPITALS. The CONTRACTOR acknowledges its costs for billing and collection, and its obligation for taxes on collections, shall be the responsibility of the CONTRACTOR, as stated in the Scope of Services.

Pricing for **Kohala Hospital** for Twenty-Four (24) months shall be as follows:

- B. Offeror submits an amount of

\$_____ per month for providing the SERVICES required under the Scope of Services contained in this Agreement. This fee shall be inclusive of all taxes and expenses incurred. Taxes related to collections are not to be passed on to the HOSPITALS. The CONTRACTOR acknowledges its costs for billing and collection, and its obligation for taxes on collections, shall be the responsibility of the CONTRACTOR, as stated in the Scope of Services.

3.8.2 Summary Offer

Provide a detailed, line-item list including at a minimum: description of CONTRACTOR’s costs associated with providing services to each of the two HOSPITALS, including operating expenses and ALL physician compensation elements for all personnel performing services; hours required; taxes including Hawaii General Excise Tax for professional services, with a summary total, representing the dollar amount offered (Summary Offer) to perform Scope of Service requirements of this RFP. Please note that CONTRACTOR’s tax obligations related to collections may not be passed on the HOSPITAL.

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

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

3.8.3 Non Applicable Proposal Requirement

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

3.8.4 Non-Acceptance of any RFP Requirement

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

- ATTENTION -

Please refer to Section 1.7 for the appropriate process and timing for requesting revisions to the terms and conditions.

Any proposal not in compliance with the procedures set forth in Section 1.7, offering any other set of terms and conditions contradictory to those included in the RFP, will be disqualified without further notice.

3.8.5 Proposal Submission Checklist

The Proposal Submission Checklist is to be used by the OFFEROR to ensure that all required documents and information are being submitted with OFFEROR’S proposal; and, as a supplementary means for HHSC to perform the evaluation of the “Mandatory Requirements”, as set forth in subsection 4.2.1. The checklist is required to be completed by each OFFEROR and included (as the last document) in the proposal package. The proposal submission checklist is located under **APPENDIX B**, following Section 5 of the RFP.

SECTION 4

EVALUATIONS

4.0 INTRODUCTION

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

4.1 PROPOSAL EVALUATION COMMITTEE

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

4.2 EVALUATION PHASES

Evaluation phases will be conducted as follows:

Phase 1.....Evaluation of Mandatory Requirements

Phase 2.....Technical Proposal Evaluation

Phase 3.....Price Proposal Evaluation

Phase 4.....Proposal Discussions by Priority-List **(optional)**

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

Phase 6.....Recommendation for Contract Award

4.2.1 PHASE - 1 Evaluation of Mandatory Requirements

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

Proposal MANDATORY REQUIREMENTS:

- ✓ Proposal Cover Letter **with corporate seal or notarization**
- ✓ Technical Proposal
 - Experience & Expertise of Firm/Key Personnel
 - Method of Approach to Scope of Services
 - Miscellaneous
- ✓ Price Proposal
- ✓ State of Hawaii General Excise Tax License
- ✓ Proposal Submission Checklist

4.2.2 PHASE - 2 Technical Proposal Evaluation

Evaluation of OFFEROR'S technical proposal shall be conducted using the technical proposal categories and the value weight percentages identified in Section 4.3 and the evaluation scoring system identified in Section 4.5.

4.2.3 PHASE - 3 Price Proposal Evaluation

Evaluation of the price proposal shall be conducted using the price proposal category and the value weight percentages identified in Section 4.3 and the evaluation scoring system identified in Section 4.4.

4.2.4 PHASE - 4 Proposal Discussions with Priority-Listed OFFERORS (Optional)

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

4.2.5 PHASE - 5 Best and Final Offers (Optional)

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

4.2.6 PHASE - 6 Recommendation for Contract Award

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

4.3 EVALUATION CATEGORIES AND VALUE WEIGHT PERCENTAGES

MANDATORY REQUIREMENTS.....**PASS/NO PASS**

Technical Proposal

Value Weight

- Experience & Expertise of Firm/Key Personnel 40%
- Method of Approach to Scope of Services 30%
- Price Proposal 30%

TOTAL **100%**

4.4 **EVALUATION SCORING SYSTEM**

The maximum number of points available for scoring is one hundred (100) per evaluator. The proposal receiving the highest number of points is considered statistically the best proposal and the **best value** to HHSC; and, will be recommended for award of contract, unless otherwise determined and justified by the evaluation committee.

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

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

SECTION 5

AWARD OF CONTRACT

5.0 AWARD OF CONTRACT

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

5.1 CONTRACT AWARD NOTIFICATION

The notice of award, if any, resulting from this solicitation shall be posted on the Kona Community Hospital website: <http://www.kch.hhsc.org/Procurement/>. This will serve as the official notification to all OFFERORS. In addition, the Issuing Officer will inform the successful OFFEROR of contract award selection by an official “notice of award” letter.

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

5.2 CONTRACT AWARD DEBRIEFING

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

5.3 METHOD OF AWARD

5.3.1 Contract Document

The contract will be awarded by executing a **“PHYSICIAN EMERGENCY DEPARTMENT COVERAGE SERVICES AGREEMENT”** (hereinafter “CONTRACT”) by HHSC and the successful OFFEROR (hereinafter “CONTRACTOR”). This document will serve as the official, legal contractual instrument between both parties. This document will incorporate (by attachments or reference) the RFP, with any and all addendums; GENERAL CONDITIONS and any SPECIAL CONDITIONS; and the CONTRACTOR’s accepted proposal, with any and all addendums, changes, negotiated agreements, all of which becomes part and whole of the CONTRACT. A “sample” CONTRACT is located at APPENDIX C. Please DO NOT complete or execute the “sample” CONTRACT.

5.4. GENERAL AND SPECIAL CONDITIONS:

The GENERAL CONDITIONS PURCHASE OF GOODS AND SERVICES FROM HEALTHCARE PROVIDERS (Non-103D), Attachment 4

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

5.4.1 General Excise/Use Tax

Refer to the GENERAL CONDITIONS – PURCHASE OF GOODS AND SERVICES FROM HEALTHCARE PROVIDERS (Non-103D), Attachment 4. Work to be performed under this solicitation is a business

activity taxable under Chapter 237, HRS, and Chapter 238, HRS, where applicable. Both out-of-state and Hawaii CONTRACTOR are advised that the gross receipts derived from this solicitation are subject to the general excise tax imposed by Chapter 237, HRS, and where applicable to tangible property imported into the State of Hawaii for resale, subject to the use tax imposed by Chapter 28, HRS.

Pursuant to Section 237-9, HRS, the CONTRACTOR is required to obtain and/or possess a valid General Excise Tax License from the Hawaii State Department of Taxation (DOTAX) prior to executing a contractual agreement with a State Agency (Reference the GENERAL CONDITIONS - PURCHASE OF GOODS AND SERVICES FROM HEALTHCARE PROVIDERS (Non-103D), Attachment 4

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

5.4.2 Contract Execution

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

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

5.4.3 Contract Commencement Date

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

APPENDIX A

PROPOSAL TRANSMITTAL COVER LETTER

Ms. .Stransky:

(Name of Business) _____ proposes to provide any and all goods and services as set forth in the “Request for Proposals for Competitive Sealed Proposals” to Provide Twenty-Hour Hour Emergency Physician Services for the Kona Community Hospital and Kohala Hospital Emergency Departments, **RFP # HHSC FY21-001**, for which fees/costs have been set. The fees/costs offered herein shall apply for (Please insert applicable period of time) _____.

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

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

Other information:

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

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

State of Incorporation is: (Specify) _____

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

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

APPENDIX B

MANDATORY - PROPOSAL SUBMISSION CHECKLIST

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

PLEASE CHECK OFF:

| OFFEROR Shall Check Off Submitted | Proposal Items | HHSC Internal Use ONLY |
|--------------------------------------|--|---------------------------|
| | Proposal Received "On-Time" | <input type="checkbox"/> |
| <input type="checkbox"/> | One (1) Digital Proposal emailed to Astransky@hhsc.org | <input type="checkbox"/> |
| <input type="checkbox"/> | Proposal Transmittal Cover Letter: | <input type="checkbox"/> |
| <input type="checkbox"/> | • Official Business Letterhead | <input type="checkbox"/> |
| <input type="checkbox"/> | • Authorized Signature | <input type="checkbox"/> |
| <input type="checkbox"/> | • Corporate Seal or Notarized | <input type="checkbox"/> |
| <input type="checkbox"/> | • Hawaii General Excise Tax License | <input type="checkbox"/> |
| | Technical Proposal | |
| <input type="checkbox"/> | • Experience & Expertise of Firm/Key Personnel | <input type="checkbox"/> |
| <input type="checkbox"/> | • Method of Approach to Scope of Services | <input type="checkbox"/> |
| | | |
| | Price Proposal | |
| <input type="checkbox"/> | • Summary | <input type="checkbox"/> |
| <input type="checkbox"/> | • Summary Offer | <input type="checkbox"/> |
| <input type="checkbox"/> | Optional Services Costs (If any) | <input type="checkbox"/> |
| <input type="checkbox"/> | Non Applicable Proposal Requirement(s) | <input type="checkbox"/> |
| | | |
| <input type="checkbox"/> | Proprietary/Company Financial Documents MANDATORY | <input type="checkbox"/> |
| <input type="checkbox"/> | Others (List) | <input type="checkbox"/> |
| <input type="checkbox"/> | Proposal Submission Checklist | <input type="checkbox"/> |
| | | |

APPENDIX C

[SAMPLE] PHYSICIAN EMERGENCY DEPARTMENT COVERAGE SERVICES AGREEMENT **Insert Contract Number**

This PHYSICIAN EMERGENCY DEPARTMENT COVERAGE SERVICES AGREEMENT (hereinafter “Agreement”) is made by and between Insert Name and Address of Facility, a division of Hawaii Health Systems Corporation, a public body corporate and politic and an instrumentality and agency of the State of Hawaii (hereinafter “HOSPITAL” or “HHSC”), and Insert Name of Physician (hereinafter “PHYSICIAN” or “CONTRACTOR”), a Fill in type of business--e.g. sole proprietor, professional corporation, or LLC under the laws of the State of Hawaii, whose business address is as follows:

Insert Street Address

Insert City, Insert State Insert Zip Code

RECITALS

WHEREAS:

- A. HHSC is the owner and operator of the above-referenced HOSPITAL and desires PHYSICIAN to perform certain emergency department coverage services (“Emergency Department Coverage Services,” or “Services”), as more fully set forth in this Agreement, for and on behalf of HOSPITAL’s patients, in order to better serve the community and meet HOSPITAL’s obligations under applicable laws, regulations and rules, including, but not limited to, the Emergency Medical Treatment and Active Labor Act, 42 USC 1395 dd (collectively referred to as “EMTALA”); and
- B. HHSC has determined that the proposed arrangement with PHYSICIAN will promote the provision of quality health care; and
- C. PHYSICIAN is licensed to practice in the State of Hawaii, is qualified to provide the Services, and desires to perform the Services under the proposed arrangement with the HOSPITAL.

NOW, THEREFORE, in consideration of the recitals above and the mutual covenants and conditions contained herein, HOSPITAL and the PHYSICIAN agree as follows:

1. Scope of Service. PHYSICIAN shall, in a proper and satisfactory manner as determined by HOSPITAL, provide all the Services set forth in ATTACHMENT 1, which is attached hereto and hereby made a part of this Agreement.

2. Time of Performance. The performance required of PHYSICIAN under this Agreement shall be executed in accordance with the time period set forth in ATTACHMENT 2, which is attached hereto and hereby made a part of this Agreement.

3. Compensation. PHYSICIAN shall be compensated for services performed under this Agreement in accordance with the Compensation schedule set forth in ATTACHMENT 3, which is attached hereto and hereby made a part of this Agreement.

4. Declaration. The Standards of Conduct Declaration of the PHYSICIAN is attached hereto and hereby made a part of this Agreement.

5. Other Terms and Conditions. The General Conditions for Purchase of Goods and Services from Healthcare Service Providers, version Insert Version Number, available on-line at the HHSC internet site, www.hhsc.org/GC-HSP, are incorporated herein as if set out fully in this Agreement; any Special Conditions are attached hereto and hereby 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.

6. 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 HOSPITAL or the HHSC shall be sent to:

- 1) Regional CEO, Insert Name of Region Region

Insert Street Address

Insert City, Hawaii Insert Zip Code

With a copy to:

- 2) Vice-President and General Counsel
Hawaii Health Systems Corporation

3675 Kilauea Avenue

Honolulu, Hawaii 96816

Notice to the PHYSICIAN shall be sent to the PHYSICIAN's address as indicated above in this Agreement. The PHYSICIAN is responsible for notifying HOSPITAL in writing of any change of address.

A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier.

7. Technical Representative. The Technical Representative shall have the right to oversee the successful completion of contract requirements, including monitoring, coordinating and assessing PHYSICIAN's performance, and approving completed work/services with verification of same for PHYSICIAN's invoices. The Technical Representative also serves as the point of contact for the PHYSICIAN for "Technical" matters (non-contractual) from award to contract completion. The Technical Representative is:

Name and Title of Technical Representative: Insert Name

Insert Title

Address of Technical Representative:

Insert Street Address

Insert City, Hawaii Insert Zip Code

8. Not-to-Exceed Amount of the Agreement. The total sum of money HOSPITAL is administratively authorized to expend under this Agreement, including all applicable taxes and expenses incurred, is Spell out dollar amounts and Spell out cents/100 DOLLARS (\$Insert dollar amount.Insert numeric cents amount), subject to appropriation.

IN VIEW OF THE ABOVE, the parties execute this Agreement by their signatures, on the dates below.

[THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY.

EXECUTIONS APPEAR ON THE FOLLOWING PAGES]

**HAWAII HEALTH SYSTEMS CORPORATION
PHYSICIAN EMERGENCY DEPARTMENT COVERAGE SERVICES
AGREEMENT**

HOSPITAL/HHSC

Signature: _____

Name: Insert Name of HHSC Signatory

Title: Insert Title of HHSC Signatory

Date _____

CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

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

By: _____ Date _____
[Signature]

Name: Insert Name of HHSC Signatory

HHSC Title: Insert Title of HHSC Signatory

[THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY.]

**HAWAII HEALTH SYSTEMS CORPORATION
PHYSICIAN EMERGENCY DEPARTMENT COVERAGE
SERVICES AGREEMENT**

I hereby represent and warrant that I have the legal right and authority to execute this Agreement on behalf of the PHYSICIAN above named.

I further confirm that I have reviewed the General Conditions for Physician Healthcare Services, version Insert Version Number, available on-line at the HHSC internet site, www.hhsc.org/GC-HSP, which are incorporated herein as if set out fully in this Agreement.

PHYSICIAN/CONTRACTOR

Signature: _____

Insert Physician's Name and Title (e.g. M.D., D.O.)

Insert Title

Date: _____

[THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY.]

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

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

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

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

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

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

CONTRACTOR

By: _____

Print Name: _____

Print Title: _____

Date: _____

Name of CONTRACTOR: _____

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

SCOPE OF SERVICES

A. PHYSICIAN'S DUTIES

Standard Version:

1. **Emergency Department Coverage Services.** PHYSICIAN shall provide Emergency Department Coverage Services at the HOSPITAL in accordance with the schedule for such coverage set forth by the HOSPITAL and in accordance with the following:

- a. **Minimum Hours.** PHYSICIAN shall provide a minimum of Insert minimum number of shifts in numerals, stating the length of each shift in hours (e.g. 12-hour shifts, 24-hour shifts) and indicating a time period (e.g. per week, month, year) [i.e., 3 12-hour shifts per week].

- b. **Location.** Such coverage shall include the following requirements:

[Check only one of the following]:

- ☐ PHYSICIAN shall be on the premises of the HOSPITAL whenever providing emergency department coverage under this Agreement.

OR

- ☐ PHYSICIAN shall respond to and be available in the emergency department or the HOSPITAL within 30 minutes of the request to provide care for patients at the HOSPITAL, consistent with the obligations of HOSPITAL under applicable law, including EMTALA, and in a manner that best meets the needs of HOSPITAL's patients who are receiving services required thereunder. PHYSICIAN is not required to stay on the premises of HOSPITAL, but is required to carry a pager or a mobile telephone and to be on standby and available to respond immediately.

- c. **Emergency Department Services Provided.** PHYSICIAN shall provide those Services routinely provided to patients seen by an emergency department of a medical facility such as HOSPITAL, including, but not limited to, the following: Providing examination, evaluation and treatment of patients in HOSPITAL's emergency department and those seeking emergency medical treatment anywhere in the HOSPITAL; admitting patients to HOSPITAL when appropriate and evaluating, treating and following such HOSPITAL patients in cooperation with HOSPITAL personnel until care is assumed by another physician or dentist or the patient is appropriately discharged or transferred; working cooperatively with HOSPITAL staff assigned to the emergency department, responding to requests from other departments or areas of the HOSPITAL for advice and assistance in the treatment of in-patients who may be experiencing a medical emergency; and being available for both telephone and in person consultations for emergency

medical issues as requested by HOSPITAL physicians and staff. Such Services shall be provided in a manner compliant with all applicable laws and regulations, including, but not limited to, EMTALA.

2. Applicable Standards. PHYSICIAN agrees that all services provided pursuant to this Agreement shall be performed in compliance with all applicable standards set forth by law or ordinance including, but not limited to, EMTALA, or established by the rules and regulations of any federal, state or local agency, department, commission, association or other pertinent governing, accrediting or advisory body, including the Joint Commission, having authority to set standards for health care facilities. PHYSICIAN shall perform all services in accordance with all HOSPITAL rules, regulations, procedures, policies and bylaws and all HOSPITAL Medical Staff rules, regulations, procedures, policies and bylaws.

3. Records and Reports. PHYSICIAN shall provide or cause to be provided to HOSPITAL all records and reports requested by HOSPITAL regarding services performed by PHYSICIAN pursuant to this Agreement. PHYSICIAN shall also submit promptly or require Clinic personnel working under PHYSICIAN's supervision to submit promptly to the Facility's medical records administrator and/or the patient's private physician (if applicable) written reports of all examinations, treatments and procedures performed pursuant to this Agreement. PHYSICIAN shall as requested by HOSPITAL participate in the development, implementation and use of the medical records and report forms provided by the Facility. PHYSICIAN agrees that all records and reports required by this Paragraph shall be the exclusive personal property of HOSPITAL.

4. Use of Premises. PHYSICIAN shall not use or knowingly permit any other person who is under PHYSICIAN's direction to use, any part of the Facility's premises for any purpose other than the performance of medical services for the Facility, its patients and their private physicians (if applicable) pursuant to this Agreement. This Agreement shall not constitute a lease or rental of any portion of the Facility, but shall constitute merely a license to use the Facility for the purposes set forth herein.

5. General Performance, Time Commitment, and Administrative Coordination. PHYSICIAN shall discharge his or her duties conscientiously, diligently, in good faith, and to the best of PHYSICIAN's ability, experience and talents. PHYSICIAN shall devote sufficient time and effort to the proper performance of PHYSICIAN's duties and responsibilities under this Agreement. PHYSICIAN shall maintain records as the HOSPITAL deems necessary or appropriate to document the time spent in discharging his or her duties.

6. Qualifications. Throughout the term of this Agreement PHYSICIAN shall maintain, on an unrestricted basis: (a) a license to practice medicine in the State of Hawaii; (b) a Federal DEA number; and (c) Medical Staff membership in good standing and appropriate clinical privileges at HOSPITAL. PHYSICIAN shall provide proof of such licensure as required herein to HOSPITAL upon HOSPITAL's request. Additionally, PHYSICIAN shall meet all of the following that are checked:

Board Certification *[Check only one.]*

- ☐ Board Certification by the Insert Name of Board is required and PHYSICIAN represents and warrants that he or she has such Board certification.
- ☐ Board Certification by the Insert Name of Board is required and PHYSICIAN promises that s/he will sit for this Board Examination not later than Insert Date and further understands that successful completion of this requirement is mandatory and that this Agreement may be terminated by HOSPITAL upon thirty (30) days notice if the above Board Certification requirement is not met by Insert Date.
- ☐ Board Certification is not required for this Agreement.

Other Affiliations and Memberships *[Check all that apply and complete.]*

- ☐ **Other Affiliations** - PHYSICIAN shall also be approved for, and maintain throughout the term of this Agreement, Medical Staff membership and appropriate clinical privileges at **Insert Name of Other Facility**.
- ☐ **Membership** - PHYSICIAN is further required to maintain membership in good standing in the following organizations or associations:

Insert Organization or Association Names.

B. HOSPITAL'S DUTIES

1. **Compensation.** HOSPITAL agrees to pay PHYSICIAN as set forth in ATTACHMENT 3.

2. **Equipment, Facilities, Supplies, Utilities, Services, Quarters and Travel.**
HOSPITAL shall, at no cost to PHYSICIAN, provide on a non-exclusive basis all equipment, facilities, supplies, utilities, including telephone service, and other services, as the HOSPITAL shall, in its sole discretion, after consultation with PHYSICIAN, determine from time to time to be necessary for the proper operation of the HOSPITAL's Emergency Room. The parties expressly agree that all items supplied by HOSPITAL pursuant to this provision shall remain the exclusive personal property of HOSPITAL. To the extent necessary for facilitation of PHYSICIAN's Services hereunder, as determined in the discretion of HOSPITAL, HOSPITAL may supply temporary quarters for PHYSICIAN within the HOSPITAL facility or on its campus or adjacent areas. Such quarters are to be used only during the times when PHYSICIAN is providing Services hereunder.

[Check the following box only if Travel reimbursement is applicable to this Agreement.]

☐ To the extent necessary for facilitation of PHYSICIAN's Services hereunder, as determined in the discretion of HOSPITAL, HOSPITAL may also reimburse PHYSICIAN for reasonable cost of travel required in order for PHYSICIAN to provide Services hereunder (e.g. interisland travel) and/or reasonable rental expenses for temporary lodging nearby HOSPITAL

when HOSPITAL is unable to provide temporary quarters with the HOSPITAL as set out above (with such temporary lodging to be used only during the times when PHYSICIAN is providing Services hereunder). Any reimbursement of expenses for travel and/or temporary lodging must be approved in advance, included as a separate item listed on PHYSICIAN's invoices, supported by submission of appropriate receipts and fully compliant with any applicable HHSC or HOSPITAL policies.

3. **Personnel.** HOSPITAL shall employ such non-physician personnel as HOSPITAL deems necessary for the proper operation of the Department. To the extent practicable, HOSPITAL will consult with PHYSICIAN from time-to-time regarding non-physician staffing of the Department.

C. GENERAL PROVISIONS

1. Records and Intellectual Property.

a. All books, records, lists, charts, forms, correspondence, papers, writings, and other typed or printed documents, videos, films, and recordings, whether furnished by HOSPITAL or prepared by PHYSICIAN which contain any information relating to HOSPITAL and its business, activities, or existing or prospective customers or clients (collectively, "Materials") are and shall remain the exclusive property of HOSPITAL. PHYSICIAN shall neither make nor retain any copies of such Materials without the prior written consent of HOSPITAL. PHYSICIAN shall have no interest or right in or to any Materials.

b. Any document or discovery, invention or development produced in whole or in part under this Agreement shall be the exclusive property of HOSPITAL and shall not be the subject of an application for copyright or patent by or on behalf of PHYSICIAN.

c. If and to the extent that Section 1861(v)(1)(I) of the Social Security Act applies to this Agreement, then PHYSICIAN shall keep, maintain and make available the appropriate records to the persons authorized under the statute.

2. **Further Acts.** Each party shall perform any further acts and execute and deliver any further documents that may be reasonably necessary or otherwise reasonably required to implement the provisions of this Agreement. Without limiting the generality of that statement, PHYSICIAN shall sign such document relating to the privacy of medical records under HIPAA that HOSPITAL reasonably requests.

3. **No Assignment or Delegation.** Neither this Agreement nor any of the rights or duties under this Agreement may be assigned or delegated by PHYSICIAN, and any purported assignment shall be void.

4. **Billing and Collections.** *[Please select only one of the following:]*

- ☐ **Physician's Submission of Claims.** PHYSICIAN shall be solely responsible to submit claims and collect payments for any professional services that PHYSICIAN provides personally to HOSPITAL's patients. HOSPITAL shall be solely responsible to submit claims for items and technical services that it provides to HOSPITAL's patients.

OR

☐ **HOSPITAL Billing and PHYSICIAN's Assignment of Professional Fees.**

a. HOSPITAL shall bill and collect all fees for the Services rendered pursuant to this Agreement and PHYSICIAN agrees that he or she shall not take any actions whatsoever to bill (or cause to be billed) any patient, other individual, or entity for any such services and agrees to accept only such compensation as is set forth in this Agreement as payment in full for all Services rendered in accordance with the terms of this Agreement. PHYSICIAN further agrees to provide HOSPITAL with documentation in a manner satisfactory to HOSPITAL regarding all professional Services rendered by PHYSICIAN for HOSPITAL patients and further agrees to cooperate with HOSPITAL to ensure the prompt billing of all patients for all services rendered.

b. PHYSICIAN hereby assigns to HOSPITAL all amounts directly or indirectly payable as a result of Services provided by PHYSICIAN under the terms of this Agreement and during the term of this Agreement, including, by way of example and not by way of limitation, amounts paid by patients, by any insurance company, pursuant to any workers' compensation program, by employers or employer plans and amounts paid by any other third party payor. HOSPITAL shall provide billing and collection services pursuant to its usual policies and procedures, and shall not be required to take any extraordinary action in this regard, including litigation. With respect to any claims submitted to the Medicare program with respect to services provided by PHYSICIAN hereunder, PHYSICIAN and HOSPITAL agree that applicable Medicare regulations (42 CFR 424.80) provide as follows:

“(d) Reassignment to an entity under a contractual arrangement: Conditions and limitations.

(1) Liability of the parties. An entity enrolled in the Medicare program that receives payment under a contractual arrangement under paragraph (b)(2) of this section and the supplier that otherwise receives payment are jointly and severally responsible for any Medicare overpayment to that entity.

(2) Access to records. The supplier furnishing the service has unrestricted access to claims submitted by an entity for services provided by that supplier.”

TIME OF PERFORMANCE

1. PHYSICIAN shall provide the services required under this Agreement from Insert start date, to and including Insert end date, unless sooner terminated or extended as provided.

2. This Agreement *[Check only one option – If Extension is selected, fill in blanks to specify number of additional terms and number of years per term]:*

☐ May not be extended; or

☐ May be extended for () additional term(s) of () year(s), subject to appropriation, and upon mutual agreement in writing.

3. The HOSPITAL may, at any time, terminate this Agreement upon the death or permanent disability of PHYSICIAN, the loss or suspension of PHYSICIAN's license to practice medicine, or the loss or suspension of PHYSICIAN's Medical Staff membership or clinical privileges. If PHYSICIAN is unable to perform PHYSICIAN's functions under this Agreement for a period in excess of 30 consecutive days, or 45 days in the aggregate over any three-month period, PHYSICIAN shall be considered to be permanently disabled for the purposes of this Section.

4. The HOSPITAL may, at any time, terminate this Agreement upon PHYSICIAN's commission of any illegal act, including but not limited to fraud or misrepresentation, detrimental to the business or reputation of HOSPITAL.

COMPENSATION

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

- A. The HOSPITAL shall pay PHYSICIAN **Spell Out Dollar Amounts and Spell Out Cent Amounts/100 DOLLARS (\$Insert Numeric Dollar Amounts.Insert Numeric Cent Amounts)** per hour of call for unrestricted call coverage, payable in arrears, in accordance with and subject to the following:
1. HOSPITAL shall pay the above sum for call coverage, in excess of the first Insert Number of Days, Hours, or Shifts of Unpaid Call Coverage of unpaid Emergency Department Coverage Services in any given month.
 2. Payment of compensation shall be subject to prior receipt of the following written documentation, which shall be included with the invoices for services:
 - The date(s) of the service(s) performed;
 - The time spent on the duties defined in the Agreement
 - Signed and dated by PHYSICIAN.
 3. PHYSICIAN's invoice is due by the tenth (10th) day of the month immediately following the month in which the services are provided or the reimbursable cost is incurred. The HOSPITAL shall pay sums due no later than Insert Spelled Out Number of Days (Insert Numeric Number of Days) after receipt of PHYSICIAN'S invoice.
 - 4.
 5. Notwithstanding the foregoing, if PHYSICIAN is scheduled to provide call services and either does not respond when called or does not come in to the HOSPITAL if requested, PHYSICIAN shall not receive compensation for the applicable Hour or other length of shift.of call.

GENERAL CONDITIONS
(PURCHASE OF GOODS AND SERVICES FROM HEALTHCARE SERVICE PROVIDERS)
(NON-103D)

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1. **COORDINATION OF SERVICES BY THE HHSC.** The “head of the purchasing agency” (through the Technical Representative(s) or other designee as specified in the Agreement), shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Agreement. The CONTRACTOR shall communicate with the head of the purchasing agency through the Technical Representative(s) or other designee at all stages of the CONTRACTOR’s work, and submit to the head of the purchasing agency for resolution any questions which may arise as to the performance of this Agreement. “Purchasing agency” as used in these General Conditions means and includes any HHSC region or facility or the HHSC corporate office which is authorized to enter into contracts for the procurement of goods or services. The term “HHSC” refers to HHSC and its region or facility entering into this Agreement.

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

a. CONTRACTOR is not bound by any agreement or arrangement that would preclude said CONTRACTOR from entering into or fully performing as required under this Agreement;

b. No Provider is bound by any agreement or arrangement that would preclude said Provider from fully performing the services required under this Agreement;

c. No Provider’s license to practice medicine in the State of Hawaii (“STATE”) or in any other jurisdiction has ever been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or restricted in any way;

d. No Provider’s medical staff privileges at any health care facility have ever been denied, suspended, revoked, terminated voluntarily relinquished under threat of disciplinary action, or made subject to terms of probation or any other restriction;

e. No Provider has in the past conducted, or is presently conducting, his or her medical practice in such a manner as to cause such Provider to be suspended, excluded, barred or sanctioned under the Medicare or Medicaid Program, or any government licensing agency, nor has Provider ever been convicted of a criminal offense related to health care, or listed by a federal agency as debarred, excluded or otherwise ineligible for federal program participation;

f. Each Provider has, and shall maintain throughout the term of this Agreement, an unrestricted license to practice medicine in the STATE and medical staff privileges at the HHSC facility or facilities;

g. No Provider receives aggregate compensation from CONTRACTOR that varies with, or otherwise reflects, the volume or value of referrals or other business generated by Provider for the HHSC facility or facilities furnishing the designated health services as defined under 42 C.F.R. Section 411.351;

h. The aggregate services CONTRACTOR provides pursuant to the terms of this Agreement do not exceed those that are reasonable and necessary for the legitimate and commercially reasonable business purpose of the services;

i. The services provided pursuant to the terms of this Agreement do not involve the counseling or promotion of a business arrangement or other activity that violates any STATE or Federal law; and

j. CONTRACTOR warrants that: neither CONTRACTOR, any person with an ownership interest in CONTRACTOR, any Provider providing services hereunder, nor any member of any such Provider’s immediate family is employed by or has a financial relationship with HHSC or any of its subsidiaries or affiliates. If at any time during the term of this Agreement such a relationship becomes established, immediate notice shall be given by CONTRACTOR to HHSC as provided in this Agreement. HHSC will then review the situation and determine if such relationship complies with applicable law. If the relationship and this Agreement are found by HHSC to comply with applicable law, no further steps shall be taken. If the relationship and the Agreement are found to not comply with applicable law, then HHSC shall propose appropriate amendments to this Agreement or the other relationship (which may include termination) so as to ensure that this Agreement and the other relationship comply with all applicable laws.

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

3. **HHSC EMPLOYEES; PROVIDERS’ OBLIGATIONS.** Neither CONTRACTOR nor Provider shall solicit the services of, or employ or procure on behalf of another the employment of, any individual currently employed by HHSC, except

with the express written consent of HHSC; nor shall CONTRACTOR or any Provider engage in any other activity which would be in conflict with his/her/its respective obligations hereunder.

4. CONTRACTOR EXCLUSION FROM FEDERAL PROGRAMS. CONTRACTOR affirmatively states that neither CONTRACTOR nor any of its employees, agents or subcontractors, including Providers, performing services or providing goods pursuant to this Agreement are excluded from participation in federal health care programs as defined in the Social Security Act (Section 1128 and 1128A) and other federal laws and regulations relating to health care. HHSC reserves the right to verify that the above statement is true and to immediately cancel this Agreement in the event it is not true.

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

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

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

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

6. SUBCONTRACTS AND ASSIGNMENTS. Except as otherwise set forth in the Agreement, the CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Agreement and no such assignment or subcontract shall be effective unless the CONTRACTOR obtains the prior written consent of HHSC.. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Agreement shall be effective unless and until the assignment is approved by HHSC. This Agreement is assignable by HHSC without consent provided that HHSC provides prompt written notice of the assignment.

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

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

9. NONDISCRIMINATION. No person performing work under this Agreement, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable Federal, STATE, or County law.

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

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

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

- c. Any Provider is required to pay damages in any malpractice action by way of judgment or settlement;
- d. Any Provider becomes the subject of a disciplinary proceeding or action before any governmental or professional licensing board, medical staff or peer review body;
- e. Any Provider's DEA number is revoked, suspended, terminated, relinquished, placed on terms of probation, or restricted in any way;
- f. Any event that substantially interrupts all or a portion of any Provider's professional practice or that materially adversely affects any Provider's ability to perform Provider's obligations hereunder; or
- g. Any Provider is convicted of a criminal offense related to health care or any Provider is listed by a federal agency as being debarred, excluded or otherwise ineligible for federal program participation.

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

12. COMPENSATION.

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

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

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

13. TERM AND TERMINATION.

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

b. Termination.

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

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

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

14. IMMEDIATE REPLACEMENT OF PROVIDER OR TERMINATION.

a. Upon the occurrence of any of the following events, HHSC may either: (a) immediately terminate this Agreement in the event CONTRACTOR providing services hereunder is a sole proprietor, solely-owned professional

corporation, or other similar entity with only a single Provider providing services hereunder; or (b) require immediate removal and replacement of any Provider providing services hereunder ("Affected Provider") by written notice to CONTRACTOR:

- (1) the denial, suspension, revocation, termination, restriction, lapse or voluntary relinquishment (under threat of disciplinary action) of any Affected Provider's medical staff membership and/or privileges at HHSC or of any Affected Provider's license to practice medicine in the STATE;
- (2) the denial, suspension, revocation, termination, relinquishment (under threat of disciplinary action) or restriction of any Affected Provider's medical staff membership and/or privileges at any health care facility other than HHSC, or of any Affected Provider's license to practice medicine in any jurisdiction other than the STATE;
- (3) the death of any Affected Provider, or the disability of any Affected Provider which prevents such Affected Provider from performing the services in compliance with applicable standards as described above, as determined in the discretion of HHSC Administrator in consultation with an officer of HHSC's medical staff;
- (4) the termination, revocation, restriction, or relinquishment of any Affected Provider's DEA number;
- (5) the failure of CONTRACTOR to make a timely disclosure concerning the Affected Provider required pursuant to paragraph 10, "Required Disclosures", hereof;
- (6) conduct by an Affected Provider which, in the discretion of HHSC in consultation with an officer of the medical staff of HHSC, could adversely affect the quality of professional care provided to HHSC's patients or the performance of duties required hereunder, or be prejudicial or adverse to the best interest and welfare of patients;
- (7) breach by any Affected Provider of any of the confidentiality provisions hereof;
- (8) any Affected Provider's conviction of a criminal offense related to health care, or any Affected Provider's listing by a federal agency as being debarred, excluded or otherwise ineligible for federal program participation; or
- (9) Provider's commission of any act, illegal or otherwise (including, but not limited to, fraud or misrepresentation), detrimental to the business or reputation of HHSC or any of its facilities.

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

15. CONFIDENTIALITY.

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

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

c. Patient Information. Neither CONTRACTOR nor any Provider, nor HHSC, shall disclose to any third party, except where permitted or required by law, any patient or medical record information regarding HHSC's patients; and CONTRACTOR, Providers, and HHSC shall comply with all federal and STATE laws and regulations, and all bylaws, rules,

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

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

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

16. INSURANCE.

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

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

17. CONTRACTOR'S TAX RESPONSIBILITIES.

a. The CONTRACTOR shall be responsible for payment of all applicable federal, STATE, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Agreement, including, but not limited to, (i) income taxes, (ii) employment-related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.

b. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

18. PAYMENT PROCEDURES.

a. Original Invoices Required. All payments under this Agreement shall be made only upon submission by the CONTRACTOR of original invoices specifying in reasonable detail the services performed and the amount due, and certifying that services requested under the Agreement have been performed by the CONTRACTOR according to the Agreement.

b. Prompt Payment.

(1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract, provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and

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

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

- a. Reimbursement for air transportation shall be for actual cost or coach class airfare, whichever is less.
- b. Reimbursement for ground transportation shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the head of the purchasing agency is obtained, reimbursement for subsistence allowable (i.e., hotel and meals) shall be \$145 per day, which consists of \$85 for hotel and \$60 for food, computed on quarter days. No other travel or living expense (e.g., tips, entertainment, alcohol, etc.) shall be reimbursed by HHSC, other than those items listed in subparagraphs a and b, above. Invoices shall document the days of travel by including the name of the traveler, itinerary, airfare receipt, hotel receipt, and ground transportation receipts. All travel must be pre-approved by the HHSC technical representative.
- d. CONTRACTORS located on the island where the work will be performed do not qualify for travel or subsistence reimbursement.

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

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

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

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

24. CAMPAIGN CONTRIBUTIONS. CONTRACTOR acknowledges that it is unlawful under HRS Section 11-355 (unless specifically permitted under that law) for CONTRACTOR at any time between the execution of this Agreement through the completion of this Agreement, to: (a) directly or indirectly make any contribution or to promise expressly or impliedly to make any contribution to any political party, committee, or candidate or to any person for any political purpose or use; or (b) knowingly solicit any contribution from any person for any purpose during any period.

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

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

27. CHANGES IN LAW.

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

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

- (1) The Legal Event(s) giving rise to the notice;
- (2) The consequences of the Legal Event(s) as to the Noticing party;
- (3) The Noticing Party’s intention to either:
 - (i) Terminate this Agreement due to unacceptable risk of prosecution or civil monetary penalty; or
 - (ii) Amend this Agreement, together with a statement that the purpose thereof is one or more of the following:
 - (a) to further comply with any anti-kickback or Stark II statutory provisions or rules or regulations created or affected by the Legal Event(s); or
 - (b) to satisfy any licensure, accreditation, or certification requirements created or affected by the Legal Event(s); and/or
 - (c) to eliminate or minimize the risk of prosecution or civil monetary penalty;
- (4) The Noticing Party’s proposed amendment(s); and
- (5) The Noticing Party’s request for commencement of the Renegotiation Period (as defined below).

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

28. ACCESS TO BOOKS AND RECORDS. If the value or cost of services rendered to HHSC pursuant to this Agreement is Ten Thousand Dollars (\$10,000.00) or more over a twelve-month period, CONTRACTOR agrees as follows:

a. Until the expiration of four (4) years after the furnishing of such services, CONTRACTOR shall, upon written request, make available to the Secretary of the Department of Health and Human Services (the “Secretary”), the Secretary’s duly-authorized representative, the Comptroller General, or the Comptroller General’s duly-authorized representative, such books, documents, and records as may be necessary to certify the nature and extent of the cost of such services; and

b. If any such services are performed by way of subcontract with another organization and the value or cost of such subcontracted services is Ten Thousand Dollars (\$10,000.00) or more over a twelve-month period, such subcontract shall contain and CONTRACTOR shall enforce a clause to the same effect as the sub-paragraph immediately above. The availability of CONTRACTOR’s books, documents and records shall be subject at all times to all applicable legal requirements, including without limitation, such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by

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

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

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

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

32. COUNTERPARTS. This Agreement may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document. Such executions may be transmitted to the parties by facsimile or electronically and such facsimile or electronic execution and transmission shall have the full force and effect of an original signature. All fully executed counterparts, whether original executions or facsimile/electronic executions or a combination thereof shall be construed together and shall constitute one and the same Agreement.

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

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

35. MODIFICATIONS OF AGREEMENT.

a. In writing. Any modification, alteration, amendment, change or extension of any term, provision or condition of this Agreement shall be made only upon mutual agreement and by written amendment to this Agreement signed by both CONTRACTOR and HHSC.

b. No oral modification. No oral modification, alteration, amendment, change or extension of any term, provision or condition of this Agreement shall be permitted or acknowledged; and any such oral modification, alteration, amendment, change or extension shall be null and void.

c. Notwithstanding any other provisions in this contract to the contrary, any modification, alteration, amendment, change or extension of any term, provision or condition shall be null and void if such modification, alteration, amendment, change or extension is reasonably determined by either party to result in the violation of any federal or state statutes or regulations, including, but not limited to, Section 1877 of the Social Security Act, by either or both of the parties. **36.**

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

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