

Hawaii Health Systems Corporation General Conditions (Short Form)

OTHER TERMS AND CONDITIONS. The General Conditions (Short Form) are attached hereto and made a part of this Agreement. In the event of a conflict between the General Conditions (Short Form) and the vendor terms and conditions, the General Conditions (Short Form) shall control.

1. Contractor Exclusion from Federal Programs

CONTRACTOR warrants that it and none of its employees, agents, or subcontractors performing services or providing goods pursuant to this Agreement are excluded from participation in federal health care programs, as defined in the Social Security Act (Section 1128 and 1128A), and other federal laws and regulations relating to health care. CONTRACTOR has an affirmative duty to verify the accuracy of this statement at least monthly and to inform HHSC in the event it is discovered that it is no longer true. HHSC reserves the right to verify that the above sentences are true and to immediately cancel this Agreement in the event they are violated.

2. 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 federal, state, or county law or regulation.

3. Indemnification and Defense

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

4. Unilateral Rights of HHSC

HHSC may take the following actions in writing at any time during the pendency of this Agreement: (1) Terminate the Agreement in whole or in part for the convenience of HHSC. Any such termination shall be done in good faith and not arbitrarily or capriciously; (2) Order changes in the work within the scope of the Agreement; (3) Order changes in the time of performance of the Agreement that do not alter the scope of the work of the Agreement; (4) Suspend or stop the work provided for in the Agreement for a period not to exceed sixty (60) days.

If any adjustments in price are occasioned by such actions on the part of HHSC, or by variations in quantity for definite or indefinite quantity Agreements, the price adjustments shall be made pursuant to the provisions of Section 103D-501(b), Hawaii Revised Statutes, or, for Agreements not governed by Chapter 103D HRS, then by mutual agreement of the parties.

5. Termination for Default

If the CONTRACTOR refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified, or any extension thereof, or commits any other substantial breach of this Agreement, HHSC may terminate the CONTRACTOR'S right to

proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform. CONTRACTOR shall not be in default if the cause of the delay or failure in performance arises out of causes such as: acts of God, acts of a public enemy, fires, floods, epidemics or labor disputes.

6. Voluntary Termination

Either party may, in its sole discretion, terminate this Agreement without cause upon giving the other party at least sixty (60) days prior written notice. As of the effective date of termination, neither party shall have any further rights or obligations under said Agreement except: (1) As otherwise provided in this Agreement; (2) for rights and obligations accruing prior to the effective date of termination; or (3) rights arising as a result of any breach of the this Agreement.

7. Governing Law

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a State court of competent jurisdiction in Hawaii.

8. Compliance with Laws

The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations as the same may be amended from time to time, that in any way affect the CONTRACTOR's performance of this Agreement. This specifically includes Sections 103-55 and 103-55.5, Hawaii Revised Statutes, dealing with wages, hours and working conditions of employees of contractors providing services or construction. Other laws which may be applicable to contractors may include, but not be limited to: HRS Chapters 383, 386, 387, 392, and 393. It shall be the responsibility of the CONTRACTOR to determine applicability and comply with the law.

9. Warranties

CONTRACTOR warrants that it has all legal rights, title and interest in all products or goods sold, leased or licensed to HHSC. CONTRACTOR also warrants that such products substantially conform to all descriptions, specifications, representations, schedules and publications of CONTRACTOR and/or orders. Unless the warranty period provided by CONTRACTOR is longer, CONTRACTOR warrants that all products provided by CONTRACTOR shall be free from defects in materials, performance, workmanship and design for a period of one year. The warranty period shall commence after Acceptance, as defined in this Agreement. CONTRACTOR further warrants that it will perform any services required under this Agreement with promptness, diligence and in accordance with prevailing standards in the industry to the reasonable satisfaction of HHSC.

10. 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 requests 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 subcontracts shall contain and CONTRACTOR shall enforce a clause to the same effect as paragraph 10.a immediately above.

The availability of CONTRACTOR'S and subcontractor'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 these paragraphs relating to access to books and records shall survive the expiration or other termination of this Agreement regardless of the cause of such termination.

11. Corporate Compliance Program

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

12. Business Associate Addendum

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

13. Insurance

The CONTRACTOR shall obtain, maintain, and keep in force throughout the time of performance of services under this Agreement general and professional liability insurance issued by an insurance company authorized to do business in the State of Hawaii in an amount of at least ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) per occurrence and THREE MILLION AND NO/100 DOLLARS (\$3,000,000.00) aggregate. HHSC shall be named as an additional insured under the CONTRACTOR'S policies for any liability arising out of or resulting from occurrences during or in connection with the performance of the CONTRACTOR'S services under this Agreement. At the request of HHSC,

CONTRACTOR will provide HHSC a certificate of insurance showing compliance with these provisions. CONTRACTOR shall carry workers' compensation insurance in accordance with applicable law.

14. Campaign Contributions

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

15. Acceptance of Goods and Services

HHSC shall accept goods and services or give CONTRACTOR notice of rejection within a reasonable time, notwithstanding any payment, prior test, or inspection. No inspection, test, delay or failure to inspect or test, or failure to discover any defect or other nonconformance with the specifications, shall relieve CONTRACTOR of any obligations under this Agreement or impair any rights or remedies of HHSC.

16. Discount and Rebate

CONTRACTOR hereby acknowledges its obligations to comply with any and all requirements imposed upon it as a seller under 42 U.S.C. Sec.1320a-7b(b)(3)(A) and 42 C.F.R. Sec. 1001.952(h) Discounts.

17. Access to HHSC Network and Systems

CONTRACTOR may be given access to some of the HHSC computer network and systems in order to fulfill the terms of the Agreement. CONTRACTOR agrees to follow and to require all agents, employees, and subcontractors to also follow the Information Technology and Confidentiality policies summarized and posted on the HHSC Procurement internet site (www.hhsc.org/GC) and to comply with such other instructions as provided by HHSC in the use of HHSC computer systems. CONTRACTOR shall not use the HHSC systems or data for any purpose other than to fulfill its duties under this Agreement.

18. Costs and Expenses

Any reimbursement due the CONTRACTOR for per diem cost and transportation expenses under this Agreement is subject to the following limitations:

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

- d. CONTRACTORS with an office located on the same island as the site of the services to be provided pursuant to this Agreement are not entitled to per diem or transportation expense reimbursement unless explicitly specified in the Agreement.

19. Prompt Payment of Subcontractors

- a. Generally. Any money paid to a CONTRACTOR shall be disbursed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes regarding payment.
- b. Final Payment. Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract. CONTRACTOR shall comply with Haw. Rev. Stat. Chapter 103, as applicable.

20. Confidentiality of Material

- a. All material given to or made available to the CONTRACTOR by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the HHSC. It is acknowledged and agreed that all of the trade secrets, business plans, marketing plans, know how, data, contracts, including this Agreement, documents, scientific and medical concepts, billing records, personnel records, medical records of any kind, and referral sources for existing or future services, products, operations, management, business, pricing, financial status, valuations, goals, strategies, objectives and agreements of HHSC and any of its facilities, affiliates or subsidiaries, and all patient information in any form, whether written, verbal or electronic are confidential ("Confidential Information"); provided, however, that Confidential Information, with the exception of patient information, shall not include information that is in the public domain.
- b. All information, data, or other material provided by the CONTRACTOR to the HHSC is subject to the Uniform Information Practices Act, chapter 92F, HRS, as modified by chapter 323F.HRS.

21. 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.