



STATE OF HAWAII  
Department of Human Services  
REQUEST FOR PROPOSAL (RFP)

**Medicaid Provider Enrollment and Revalidation**

**RFP-MQD-2020-005**



Med-QUEST Division – Health Care Services Branch

**STATE OF HAWAII**

**DEPARTMENT OF HUMAN SERVICES  
MED-QUEST DIVISION  
KAPOLEI, HAWAII**

**RFP Release Date: September 18, 2019**

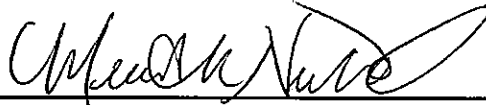
**REQUEST FOR PROPOSALS**

**No. RFP-MQD-2020-005**  
**Competitive Sealed Proposal:**

**Medicaid Provider Enrollment and Revalidation**

**will be received up to 2:00 p.m. Hawaii Standard Time (H. S.T.)  
on October 30, 2019**

**in the Department of Human Services  
Med-QUEST Division  
1001 Kamokila Boulevard, Suite 317  
Kapolei, Hawaii 96707**



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**Meredith Nichols, Assistant Administrator  
Department of Human Services/Med-QUEST Division**



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## **APPENDICES**

**Appendix A – Offer Form (OF-1)**

**Appendix B – Written Questions Form**

**Appendix C – General Conditions**

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## **Section 10 ADMINISTRATIVE OVERVIEW**

### **10.10 Purpose of the Request for Proposal (RFP)**

The purpose of this Request for Proposal (RFP) is to obtain competitive responses from qualified Offeror to perform network services and Medicaid provider enrollment and revalidation functions on behalf of the State of Hawaii, Department of Human Services (DHS), Med-QUEST Division (MQD).

The contractor shall be responsible for network services and performing activities related to provider enrollment and revalidation, including the Medicaid provider application form, DHS 1139, paper form or any subsequent web-based application Hawaii Online Kahu Utility (HOKU) system.

The Contractor shall be responsible for all costs of providing required services as described in this RFP.

Offerors are advised that the entire RFP, including all appendices, attachments, and addenda, and the corresponding proposal shall be part of the contract with the successful Offeror. MQD reserves the right to modify, amend, change, add, or delete any requirements in this RFP to serve the best interest of the State. If significant amendments are made to the RFP, interested parties shall be provided additional time to submit their proposals.

### **10.20 Authority for Issuance of the RFP**

This RFP is issued under the authority of Title XIX of the Social Security Act, 42 USC Section 1396, et. seq., as amended, the implementing regulations issued under the authority thereof, and the provisions of the Hawaii Revised Statutes (HRS) Title 9, Chapter 103D and Hawaii Administrative Rules (HAR) Chapter 3-122. All Offerors are charged with presumptive knowledge of all requirements cited by these authorities, and submission of a valid executed proposal by any Offeror shall constitute admission of such knowledge on the part of such Offeror. Failure to comply with any requirement may result in the rejection of the proposal. MQD reserves the right to reject any or all proposals received or to cancel this RFP, according to the best interest of the State.





### **10.30 Issuing Officer**

This RFP is issued by the State of Hawaii, Department of Human Services, Med-QUEST Division. The Issuing Officer within MQD is the sole point of contact from the date of release of this RFP until the selection of a successful Offeror. The Issuing Officer is:

Meredith Nichols, Assistant Med-QUEST Division Administrator  
Department of Human Services, Med-QUEST Division  
1001 Kamokila Blvd, Suite 317  
Kapolei, Hawaii 96707  
Telephone: 808-692-8050  
Fax: 808-692-8173

### **10.40 Use of Subcontractors**

In the event of a proposal submitted jointly by more than one organization, one organization shall be designated as the prime Offeror and shall have responsibility for not less than 60 percent of the work to be performed. The project leader (Project Manager) shall be an employee of the prime Offeror and meet all the relevant requirements. All other participants shall be designated as subcontractors. Major subcontractors shall be identified by name, and for each proposed subcontractor, the Offeror shall provide overview information describing what functions or tasks the subcontractor(s) would perform under this RFP. The prime Offeror shall be wholly responsible for the entire performance whether or not subcontractors are used. The prime Offeror shall sign the Contract with MQD.

### **10.50 Organization of the RFP**

This RFP is composed of eight sections:

- Section 10 – Administrative Overview – Provides general information on the purpose of the RFP, the authorities relating to the issuance of the RFP, and the organization of the RFP.
- Section 20 – RFP Schedule and Procurement Requirements – Provides information on the rules and schedules for procurement of this RFP.
- Section 30 – Background – Describes MQD, the State's current Medicaid program.



- Section 40 – Scope of Services – Provides information on the services to be provided under the Contract.
- Section 50 – Special Terms and Conditions – Describes the terms and conditions under which the work shall be performed.
- Section 60 – Technical Proposal – Defines the requirements for Offerors' Technical Proposal and the information to be provided in the proposals.
- Section 70 – Business Proposal – Defines the required format of the business proposed and information to be provided in the proposal.
- Section 80 – Evaluation and Selection – Defines the evaluation process.

Appendices are included to support the information presented in Sections 10 through 80.



## Section 20 RFP SCHEDULE AND PROCUREMENT REQUIREMENTS

### 20.10 RFP Timeline

The delivery schedule set forth herein represents MQD's best estimate of the schedule of this procurement. If a component of this schedule, such as Proposal Due date, is delayed, the rest of the schedule will likely be shifted by the same number of days. The estimated procurement schedule is as follows:

Table 2-1 Estimated Procurement Schedule

ACTIVITY	DATE
Legal Ad Date / Issue RFP	September 18, 2019
Notice of Intent to Propose	September 25, 2019 - 2:00 p.m., HST
Submission of Written Questions	September 30, 2019 - 2:00 p.m., HST
Written Responses to Questions	October 9, 2019
Proposals Due	October 30, 2019 – 2:00 p.m., HST
Estimated Contract Award	November 20, 2019
Estimated Contract Start Date	January 1, 2020

### 20.20 Written Questions

MQD will accept written questions related to this RFP until the dates and times specified in Table 2-1. The written questions must reference the RFP section, page, and paragraph number in the format provided in Appendix B of this RFP.

Offerors may email written questions to the procurement email address at:

Renee Souza: [rsouza2@dhs.hawaii.gov](mailto:rsouza2@dhs.hawaii.gov)

Subject line: RFP-MQD-2020-005 - Medicaid Provider Enrollment and Revalidation.

MQD will respond to all written questions and issue addenda (if necessary) on the date specified in Table 2-1. Only written responses to questions and/or information included in formal addenda to this RFP shall be considered as official.



## **20.30 Notice of Intent to Propose**

Offerors shall submit their Notice of Intent to Propose by the date and time specified in Table 2-1. Submission of a Notice of Intent to Propose is not a prerequisite for the submission of a proposal, but is necessary to assure proper distribution of amendments, questions and answers, and other communication regarding this RFP.

The Notice of Intent to Propose must identify a single contact person for the RFP process, an email address, and phone number for that person. All communication between the Offeror and MQD must be through that single point of contact. MQD is not responsible for proposal correspondence not received by the Offeror.

Offerors should email or mail their Notice of Intent to:

Ms. Meredith Nichols  
c/o Renee Souza  
Department of Human Services, Med-QUEST Division  
1001 Kamokila Blvd., Suite 317  
Kapolei, Hawaii 96707  
Email Address: [rsouza2@dhs.hawaii.gov](mailto:rsouza2@dhs.hawaii.gov)

## **20.40 References**

Offerors will list, using the form in Appendix H, organizations for whom services similar to those requested herein were performed within the last five (5) years. The State reserves the right to contact the references provided.

## **20.50 Documentation**

Offerors may review information describing Hawaii's Medicaid program, QUEST Integration and other Medical Assistance services and benefits by visiting MQD's website:  
<https://medquest.hawaii.gov/>.

Information regarding administrative rules may be found at:  
<http://humanservices.hawaii.gov/admin-rules-2/admin-rules-for-programs/>



## **20.60 Compliance with HRS §103D-310(c)**

Offeror is advised that if awarded a contract under this RFP, Contractor shall, upon award of the Contract, furnish proof of compliance with the following requirements of HRS §103D-310(c) and §3-122-112, of the Hawaii Administrative Rules (HAR):

- HRS Chapter 237, tax clearance;
- HRS Chapter 383, unemployment insurance;
- HRS Chapter 386, workers' compensation;
- HRS Chapter 392, temporary disability insurance;
- HRS Chapter 393, prepaid health care; and
- One of the following:
  - Be registered and incorporated or organized under the laws of the State (hereinafter referred to as a "Hawaii business"); or
  - Be registered to do business in the State (hereinafter referred to as a "compliant non-Hawaii business").

Offerors are advised that there are costs associated with compliance under this section. Any costs are the responsibility of the Offeror. Proof of compliance is shown by providing the Certificate of Vendor Compliance issued by the Hawaii Compliance Express.

## **20.70 Hawaii Compliance Express (HCE)**

The State utilizes the HCE to verify compliance with the requirements under Section 103D-310 (c), HRS and Section 3-122-112, HAR upon award of the Contract. The HCE is an electronic system that allows vendors / contractors / service providers doing business with the State to quickly and easily demonstrate compliance with applicable laws. It is an online system that replaces the necessity of obtaining paper compliance certificates from the DOTAX and IRS tax clearance Department of Labor and Industrial Relations (DLIR) labor law compliance, and DCCA good standing compliance. There is a nominal annual fee for the service and is the responsibility of the Offeror. The "Certificate of Vendor Compliance" issued online through HCE provides the registered Offeror's current compliance status as of



the issuance date and is accepted for both contracting and final payment purposes. See website:  
<https://vendors.ehawaii.gov/hce/splash/welcome.html>

## **20.80 Rules of Procurement**

To facilitate the procurement process, various rules have been established as described in the following subsections.

### **20.81 No Contingent Fees**

No Offeror shall employ any company or person, other than a bona fide employee working solely for the Offeror or company regularly employed as its marketing agent, to solicit or secure this contract, nor shall it pay or agree to pay any company or person, other than a bona fide employee working solely for the Offeror or a company regularly employed by the Offeror as its marketing agent, any fee commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award of a contract to perform the specifications of this RFP.

### **20.82 Restriction on Communication with State Staff**

In order to provide equal treatment to all Offerors, questions shall be submitted in writing and answers shall be emailed to Offerors submitting a Notice of Intent to Propose.

### **20.83 RFP Amendment**

MQD reserves the right to amend the RFP any time prior to the closing date for the submission of the proposal.

### **20.84 Costs of Preparing Proposal**

Any costs incurred by the Offerors for the development and submittal of a proposal in response to this RFP are solely the responsibility of the Offeror, whether any award results from this solicitation. The State of Hawaii shall provide no reimbursement for such costs.



20.85 Disposition of Proposals

All proposals become the property of the State of Hawaii. The successful proposal shall be incorporated into the resulting contract and shall be public record. The State of Hawaii shall have the right to use all ideas, or adaptations to those ideas, contained in any proposal received in response to this RFP. Selection or rejection of the proposal shall not affect this right.

20.86 Rules for Withdrawal or Revision of Proposal

A proposal may be withdrawn or revised at any time prior to, but not after, the deadline for receipt of proposals provided that a request in writing executed by an Offeror or its duly authorized representative for the withdrawal or revision of such proposal is filed with MQD before the deadline for receipt of proposals. The withdrawal of a proposal shall not prejudice the right of an Offeror to submit a new proposal.

20.87 Independent Price Determination

State law requires that a bid shall not be considered for award if the price in the bid was not arrived at independently without collusion, consultation, communication, or agreement as to any matter relating to such prices with any other Offeror or with any competitor.

An Offeror shall include a certified statement in the proposal certifying that the bid was arrived at without any conflict of interest, as described above. Should a conflict of interest be detected at any time during the term of the Contract, the Contract shall be null, and void and the Offeror shall assume all costs of this project until such time that a new Offeror is selected.

20.88 Confidentiality of Information

If an Offeror seeks to maintain the confidentiality of sections of the Technical Proposal, each page of the section(s) should be marked as "Proprietary" or "Confidential", and the material designated as confidential shall be readily separable from the proposal in order to facilitate inspection of the non confidential portion of the proposal. Proprietary or confidential information includes, but is not limited to, business, financial information,



medical records, and patient information. An explanation, using the form in Appendix F, to MQD of how substantial competitive harm would occur if the information is released is required in the Transmittal Letter for the Technical Proposal as described in Section 60.30. MQD shall maintain the confidentiality of the information to the extent allowed by law. Blanket labeling of the entire document as "Proprietary," however, is inappropriate.

## **20.90 Acceptance of Proposals**

MQD reserves the right to reject any or all proposals received or to cancel this RFP according to the best interest of the State.

MQD also reserves the right to waive minor irregularities in proposals providing such action is in the best interest of the State.

Where MQD may waive minor irregularities, such waiver shall in no way modify the RFP requirements or excuse an Offeror from full compliance with the RFP specifications and other contract requirements if the Offeror is awarded the Contract.

MQD also reserves the right to consider as acceptable only those proposals submitted in accordance with all technical requirements set forth in this RFP and which demonstrate an understanding of the requirements. Any proposal offering any other set of terms and conditions contradictory to those included in this RFP may be disqualified without further notice.

## **20.100 Submission of Proposals**

Each qualified Offeror may submit only one (1) proposal. More than one proposal shall not be accepted from any Offeror. The Offer Form (OF-1) shall be completed and submitted with the proposal (Appendix A). Proposals shall be submitted using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs. Failure to do so may delay proper execution of the Contract. The authorized signature on the Offer form shall be an original signature in ink. If unsigned or the affixed signature is a facsimile or a photocopy, the offer shall be automatically rejected unless accompanied by other material, containing an original signature, indicating the Offeror's intent to be bound.





Proposals shall be submitted in two parts: Technical and Business Proposals. The format and content of each are specified in Sections 60 and 70 of this RFP.

The Technical Proposal shall be submitted in a separate envelope or box from the Business Proposal. One (1) hard copy bound original and three (3) bound copies in 3-ring binder with tabbed sections and one (1) USB (Universal Serial Bus) in either PDF or MS Word 2013 or lower; and one (1) bound original and one (1) electronic version on a CD of the Business Proposal shall be received by the DHS/MQD Issuing Officer no later than 2:00 p.m. H.S.T, on the date identified in Table 2-1. Hard copy will be final if there are any discrepancies between the electronic version and the hard copy.

Any proposals received after the deadline will be rejected and returned to the Offeror. Proposals shall be mailed or delivered to:

Meredith Nichols  
c/o Renee Souza  
Department of Human Services, Med-QUEST Division  
1001 Kamokila Blvd. Suite 317  
Kapolei, Hawaii 96707

The outside cover of the package containing the Technical Proposal copied shall be marked:

Medicaid Provider Enrollment and Revalidation  
RFP-MQD-2020-005  
Technical Proposal  
(Name of Offeror)

The outside cover of the package containing the Business Proposal copied shall be marked:

Medicaid Provider Enrollment and Revalidation  
RFP-MQD-2020-005  
Business Proposal  
(Name of Offeror)

Any amendments to proposals shall be submitted in a manner consistent with this Section.



### **20.110 Proposal Opening and Inspection**

During the proposal evaluation and award recommendation period, proposals shall not be available for inspection. Proposals shall not be opened publicly but shall be opened in the presence of two or more State officials. The register of proposals and Offeror's proposals shall be open to public inspection after a contract has been awarded and executed by all parties.

### **20.120 Disqualification of Offerors**

An Offeror shall 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 bids involved in the collusive action shall be rejected and any participant to such collusion shall be barred from future bidding until reinstated as a qualified Offeror;
- An Offeror's lack of responsibility and cooperation as shown by past work or services;
- An Offeror's being in arrears on existing contracts with the State or having defaulted on previous contracts;
- An Offeror's lack of proper license to cover the type of work contemplated, if required;
- An Offeror shows any noncompliance with applicable laws;
- An Offeror's delivery of its proposal after the proposal due date;
- An Offeror's failure to pay, or satisfactorily settle, all bills overdue for labor and material on former contracts with the State at the time of issuance of this RFP;
- An Offeror's lack of financial stability and viability;
- An Offeror's consistently substandard performance related to meeting the MQD requirements from previous contracts; or
- An Offeror's lack of sufficient experience to perform the work contemplated.



### **20.130 Irregular Proposals**

Proposals shall be considered irregular and rejected for the following reasons including, but not limited to:

- If either the Transmittal Letter or Offer Form is unsigned by an Offeror or does not include evidence of authority of the officer submitting the proposal to submit such proposal;
- If the proposal shows any non-compliance with applicable law or contains any unauthorized additions or deletions, conditional bids, incomplete bids, or irregularities of any kind, which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning; or
- If an Offeror adds any provisions reserving the right to accept or reject an award, or enters into a contract pursuant to an award, or adds provisions contrary to those in the solicitation.

### **20.140 Cancellation of RFP**

The RFP may be cancelled and any or all proposals may be rejected in whole or in part, when it is determined to be in the best interest of the State, pursuant to HAR Section 3-122-96 through 3-122-97. The State shall not be liable for any costs, expenses, loss of profits, or damages whatsoever incurred by the Offeror in the event this RFP is cancelled, or a proposal is rejected.

### **20.150 Additional Materials and Documentation**

Upon request from the State purchasing agency, each Offeror shall submit any additional materials and documentation reasonably required by the State purchasing agency in its evaluation of the proposal.

### **20.160 Award Notice**

The notice of intended contract award, if any, shall be sent to the selected Offeror on or about the date specified in Table 2-1: Estimated Procurement Schedule.

The Contract award is subject to availability of funding.



Successful Offeror receiving award shall enter into a formal written contract.

No work is to be undertaken by the Contractor prior to the contract start date specified in Table 2-1. The State is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor prior to the official starting date.

Any contract arising out of an offer is subject to the approval of MQD of Attorney General as to form and to all further approvals, including the approval of the Governor as required by statute, regulation, rule, order, or other directive.



## **Section 30      BACKGROUND**

This section provides background information on the organizations and programs that will participate in the activities procured in this RFP.

### **30.10      Organization of MQD and Related Departments**

This section includes a description of the organization of MQD and other departments that administer programs related to this RFP.

#### **30.11      Department of Human Services (DHS)**

DHS is comprised of four (4) divisions with about 1,800 positions and an annual operating budget of over \$2.2 billion. Each of its divisions provides assistance to its beneficiaries in Hawaii.

- MQD provides health coverage, primarily through managed care organization health plans, to low-income families, children and individuals, and the aged and disabled.
- The Benefit, Employment and Support Services Division (BESSD) provides Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), State financial assistance programs, Low-Income Home Energy Assistance (LIHEAP), employment support, dependency diversion and prevention services, and child care licensing.
- The Social Services Division (SSD) provides protective services for abused adults and children, family strengthening, and child abuse and neglect prevention services.
- The Vocational Rehabilitation and Services for the Blind Division (VRSBD) helps persons with disabilities and the blind to become employed, start their own businesses, and live independently.

The four (4) divisions of DHS, along with the two (2) administratively attached agencies are assisted by five staff support offices. Staff support offices provide administrative hearings for applicants/beneficiaries, fiscal management, information technology systems support, management services,



research, personnel and other services. DHS maintains statewide offices in 88 locations.

### 30.12 Med-QUEST Division (MQD)

MQD administers the State's Medicaid and other health coverage programs. Medicaid, a Federal program created by Congress in 1965, was designed to provide access to medical care for the low-income population. In FY 2018, MQD spent approximately \$2.2 billion for benefits and administration of the Medicaid program.

MQD provides health coverage through several Medicaid programs under Title XIX of the Social Security Act (Act), as well as the Children's Health Insurance Program (CHIP) under Title XXI of the Act. The health coverage includes the Medicaid Fee-For-Service (FFS) program and the comprehensive Medicaid managed care programs QUEST Integration. Other smaller programs include the Breast and Cervical Cancer Treatment and Prevention (BCCTP) Program and special programs for Medicare beneficiaries, as well as State-funded medical assistance programs. By providing payment for medical, dental, and other medically necessary health care services, these programs collectively enable low-income adults and children to maintain and improve their health. MQD also administers the State's Death Payments program.

The Affordable Care Act (42 CFR Part 455 Subpart E) requires the State of Hawaii's Medicaid program, Med-QUEST Division (MQD), to perform more comprehensive screening/credentialing/enrollment initiatives to prevent Medicaid provider fraud. The MQD is required to process new provider applications and revalidate the enrollment of all providers at least every five years (42 CFR 455.414).

### Information Technology (IT) Landscape

This section describes the Hawaii Information Technology (IT) landscape as it relates to this RFP.



30.13 Hawaii Prepaid Medical Management Information System (HPMMIS) and Kauhale On-Line Eligibility Assistance (KOLEA) System

Hawaii's Medicaid provider enrollment, encounter, and claims processing functions are supported by the HPMMIS. Its role consists primarily of collecting and storing eligibility data from the KOLEA System, processing enrollment, and managing per member per month capitation calculations. The HPMMIS is managed by the Arizona Health Care Cost Containment System (AHCCCS) for Hawaii under an Interstate Agreement. The HPMMIS is a legacy mainframe system. HPMMIS is described in the table below.

**Table 3-1 HPMMIS Today**

<b>HAWAII PREPAID MEDICAID MANAGEMENT INFORMATION SYSTEM (HPMMIS)</b>	
Programs Supported	Federal (Medicaid) and State medical assistance programs
Programming Language	COBOL
Database Management System	CA DATACOM Database
Operating System	IBM mainframe system operated by the Arizona Health Care Cost Containment System (AHCCCS)
Batch Job Executions	HPMMIS communicates with KOLEA through batch processes. It has batch interfaces with the CMS. For Arizona, the PMMIS is integrated with the State's web front-end in real-time using web services.
Hosting Environment	AHCCCS systems and their subsystems are maintained in a data center operated by the Arizona Department of Administration. The hosting environment uses established industry-standard security.
Integration	HPMMIS is integrated with contractor and provider systems through the HIPAA standard transactions.
Major Functions	HPMMIS collects and stores eligibility data from KOLEA, processes enrollment, and manages per member per month capitation calculations. HPMMIS processes Fee for Service (FFS) claims from registered health care providers and collects service encounter data from the Health Plans. HPMMIS has several subsystems to perform these functions.



## **30.20 Readiness Review**

Prior to the Contract Start Date as described in Table 2-1, the DHS shall conduct a readiness review of the Contractor to provide assurance that the Contractor is able and prepared to perform all functions required by this contract. The Contractor's responsibilities in their readiness review are described in Section 40.70.

The DHS review may include, but not limited to, a walk-through of Contractor's operations, information system demonstrations and interviews with Contractor's staff. The review may include desk and on-site review of:

- Provider application credential validation process
- All required policies and procedures
- Readiness of network services

Based on the results of the review activities, the DHS shall provide the Contractor with a summary of findings including the identification of areas requiring corrective action before the Contractor begins operation. If the Contractor is unable to demonstrate its ability to meet the requirements of the contract, as determined by the DHS, within the time frame specified by the DHS may terminate the contract in accordance with Section 50.110.





## **Section 40        SCOPE OF SERVICES**

### **40.10        Introduction**

This section describes the scope of the services required for the Medicaid provider enrollment and revalidation functions.

The Contractor will be required to provide network services and work in collaboration with MQD, HPMMIS operated by Arizona Health Care Cost Containment System (AHCCCS) and the HOKU contractor.

The Contractor shall be responsible for providing computer hardware and software resources to support the completion of all tasks. No State computer resources will be available to the Contractor. The Contractor shall use and maintain a word processing system and spreadsheet software compatible with MQD's software.

In this RFP, MQD is seeking a qualified Contractor to provide the following contract tasks to support administrative tasks associated with the Medicaid provider enrollment and revalidation functions:

- Project management;
- Privacy and Security;
- Testing;
- Provider Hotline;
- Application Imaging;
- Provider outreach and education; and
- Reporting

The Contractor is required to have an office on Oahu and the key project manager shall reside in Hawaii.

Each activity includes the description of work, deliverables, and Contractor and State responsibilities required to successfully complete that activity.



## **40.20 Provider Enrollment and Revalidation**

The following section provides the description, deliverables, and Contractor and State responsibilities associated with provider enrollment and revalidation activities.

### **40.21 Provider Application**

The Contractor shall be responsible for performing activities related to Provider Enrollment and Revalidation including Medicaid provider application validation, revalidation, screening, input, and confirmation letter production. The Medicaid provider application may be the DHS 1139 paper form or any subsequent web-based application HOKU system. These activities shall be performed on Medicaid provider applications for all provider types.

The staff that processes the provider applications is not required to reside in Hawaii, but the State prefers their presence in Hawaii to respond to questions, comments and inquiries from the providers' during Hawaii's office hours, Monday through Friday 7:45 a.m. to 4:30 p.m. (H.S.T.), excluding State holidays.

The Contractor shall be responsible for the full measure of provider application functions related to the DHS 1139 form, including, but not limited to:

- Validating applications for completeness and accuracy, including calling and following up with providers for missing or incomplete information;
- Screening applications for correct and updated professional licensing, certification, and identifications, including web page searches to confirm data on the application;
- Entering application data including but not limited to service address updates, linking with group entities, ownership changes and linking payment providers into Hawaii Prepaid Medical Management Information System (HPMMIS), until the provider application is fully completed and/or approval;
- Generating and mailing out provider confirmation letters for all fully completed provider applications; and
- Image all provider applications and store in a shared location that MQD can view.



The Contractor shall be responsible for the full measure of provider application functions related to the web-based HOKU application, including, but not limited to:

- Validating and screening HOKU provider applications;
- Processing the HOKU provider application to a fully completed status;
- Perform as HOKU user support.

#### 40.22 Provider Enrollment Deliverables

- Determine and submit to the State for approval an oversight methodology for the provider enrollment and revalidation function;
- Develop and/or maintain a library of provider enrollment application and revalidation processing manuals for internal use and external review by MQD.

Contractor Responsibilities	State Responsibilities
Develop and deliver DEDs for all deliverables as defined in Section 40.21- Provider Application	Provide training and reference materials on the provider application process for all provider types, for both the DHS 1139 paper form, HPMMIS, and HOKU web-based application.
Develop, deliver, maintain and execute all deliverables as defined in Section 40.22 - Provider Enrollment Deliverables	Review all draft deliverables and provide feedback  Approve all deliverables

#### 40.30 Medicaid Provider Call Center

The following section provides the description, deliverables and Contractor and State responsibilities associated with a provider hotline.

The Contractor shall operate a toll-free call center located in Hawaii to respond to questions, comments and inquiries. The call center staff must reside in the State of Hawaii. The toll-free call center services shall be available and accessible to Medicaid Providers. The provider call center shall be staffed Monday through Friday 7:45 a.m. to 4:30 p.m. (H.S.T.), excluding State



holidays. In addition, the Contractor shall have a voicemail account for a provider to leave a message twenty-four (24) hours per day. The greeting shall identify the office and explain that the provider will receive a return call within two (2) business days, if the call is received after hours.

#### 40.31 Provider Call Center Description

The Contractor shall provide a toll-free telephone number and staff a provider call center to providers for questions regarding the DHS 1139, provider application form, HOKU support, and provider enrollment and revalidation.

At a minimum, provider call center activities include:

- (a) Response to questions related to DHS 1139
- (b) HOKU user support

Call volume may be high during the HOKU implementation and transition period.

#### 40.32 Provider Call Center Monitoring and Reporting

The Contractor shall monitor the provider call center and submit a report to MQD, refer to Section 40.40.

#### 40.33 Contractor and Medicaid Call Center Provider Responsibilities

**Table 4-1 Contractor and Medicaid Provider Call Center Responsibilities**

CONTRACTOR RESPONSIBILITIES	STATE RESPONSIBILITIES
Develop and deliver Policy & Procedures (P&P) for all deliverables as defined in Section 40.30 – Medicaid Provider Call Center	Review all P&Ps and provide feedback  Approve all deliverables

### 40.40 Reporting

The following section provides the description, deliverables, Contractor and MQD responsibilities associated with reporting activities of the Provider enrollment and revalidation functions.



#### 40.41 Provider Call Center Report

The Contractor shall use a report tool provided by MQD to submit a report on the utilization rate of the call center for providers call line during the previous quarter that shall include, at a minimum, the following:

- Number of calls (actual number and number reported per 100 members/providers);
- Call abandonment rate;
- Average speed of answer;
- Average hold time;
- Blocked call rate;
- Longest wait in queue;
- Average talk time; and
- Type of call.

The Contractor and/or MQD shall use these reports to determine the success of the Provider Call Center and make operational changes, as necessary, based on results.

#### 40.42 Ad Hoc Reports as requested by MQD

The MQD reserves the right to request a report or reports not listed above. Any such request shall be submitted in writing.

### 40.50 Network Services

MQD requires the Contactor to offer information technology help desk support, server, LAN/WAN and network device endpoint support to be task on an agreed upon hourly rate in increments of 15 minutes. Work hours may vary, average around 40 hours a month.

The duties and responsibilities include:

- Support the operation and maintenance of the network infrastructure. This includes but is not limited to hardware and software such as workstations, servers, routers,



switches, firewalls, operating systems, and office automation applications including email.

- Configures, installs, monitors and troubleshoots hardware and software. Including, identifying network hardware/software-related problems, determining the appropriate solution, and developing the complete specifications for its resolution and implementation.
- Coordinates and participates in the installation and monitoring of LAN/WAN telecommunication.
- Coordinates and participates in the measurement, analysis, and performance tuning of the LAN/WAN to insure security, connectivity, adherence to IT standards and proper operations.
- Performs network back-up procedures and prepares backup/restore production processing documentation and disaster preparedness, testing and recovery processing documentation.

#### **40.60 Additional Tasks**

MQD may require the Contractor to plan and deliver additional tasks at MQD's option. These tasks may be executed upon negotiation with the Contractor.

#### **40.70 Readiness Review**

Contractor shall comply with all readiness review activities required by the DHS. Readiness Review requires the Contractor to submit to the DHS required documents 30 days after the contract is awarded. Documents include the following:

- Staffing Chart;
- Policies and Procedures for Medicaid provider application and revalidation process
- Provider Outreach and education;
- Access to Provider portal HOKU;
- A list of Contractor's staff residing in the State of Hawaii, including their job titles;



- Resume of the Network Services staff or subcontractor for network services;
- Executed agreement between the Contractor and the subcontractor who will perform the network services, if applicable;
- Policies and Procedures for Reporting Requirements; and
- Staff Training Plan.

Contractor will be asked to participate in any on-site review activities conducted by the DHS and submit updates on implementation activities. The DHS reserves the right to request additional documents for review and approval during readiness review.



## **Section 50        SPECIAL TERMS AND CONDITIONS**

### **50.10        General**

The following documents form an integral part of the contract between the Contractor and MQD (hereafter collectively referred to as "the Contract"):

- Contract for Goods or Services: Competitive Sealed Proposals (Form AG-004), including General conditions for Goods or Services Contracts (Form AG-008-103D see Appendix C, any special conditions, attachments and addenda.
- This RFP, including all appendices, attachments, and addenda, which shall be incorporated by reference.
- The Offeror's proposal submitted in response to this RFP form, which shall be incorporated by reference.

The contract shall be construed in accordance with the laws of the State of Hawaii.

In the event of any inconsistency between the articles, attachments, specifications, or provisions which constitute this Contract, the following order of precedence shall apply:

- Contract Form AG-004, including any special conditions, attachments and addenda.
- The Special Terms & Conditions included in this section.
- The RFP (RFP-MQD-2020-005).
- The Contractor's offer (the selected Offeror's proposal in response to this RFP).

The Contractor shall comply with all applicable laws, ordinances, codes, rules and regulations of the Federal, State, and local governments, that in any way affect its performance under the Contract.

The Contractor shall pay all taxes lawfully imposed upon it with respect to the Contract or any product delivered in accordance herewith. MQD makes no representations whatsoever as to the liability or exemption from liability of a Contractor to any tax imposed by any governmental entity.





The offer shall be executed by the State of Hawaii DHS in accordance with the Hawaii Revised Statutes Chapter 103D, and the administrative rules promulgated there under.

## **50.20 Term of Contract**

This is a multi-term contract solicitation that has been deemed to be in the best interest of the State by the Director of the State of Hawaii Department of Human Services. The contract term shall begin on January 1, 2020 or upon execution of the contract, whichever is later, and shall continue through December 31, 2020.

Unless terminated, the contract may be extended without the necessity of re-bidding, for not more than two (2) additional twelve (12) month periods or parts thereof, upon mutual agreement in writing. Any renewal or extension of the contract will be subject to the appropriation and availability of funds and acceptable performance by the Contractor (to be determined by the State).

The Contractor acknowledges that other unanticipated uncertainties may arise that may require an increase or decrease in the original scope of services from the Contractor awarded this contract. In the event that increase or decrease of services may be required, the Contractor agrees to enter into a supplemental agreement upon request by the DHS for the additional work. The supplemental agreement may also include an extension of the period of performance and a respective increase or decrease in the compensation.

The contract will be cancelled only if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the initial term of the contract; however, this does not affect either the DHS's rights or the Contractor's rights under any termination clause of the contract. The DHS must notify the Contractor, in writing, at least sixty (60) days prior to the expiration of the contract whether funds are available or not available for the continuation of the contract for each succeeding contract extension period. In the event of cancellation, as provided in this paragraph, the Contractor will be reimbursed for the unamortized, reasonably



incurred, nonrecurring costs in accordance with Section 103D-315(c), HRS.

## 50.30 Insurance

The Contractor shall maintain insurance acceptable to MQD in full force and effect throughout the term of this contract, until MQD certifies that the Contractor's work has been completed satisfactorily.

Included in its submitted proposal, the Offeror shall complete and submit to MQD a Certificate of Liability Insurance (COLI) dated within thirty (30) days of the proposal submission date. Prior to or upon execution of the contract, the Contractor shall provide to MQD an updated COLI dated within thirty (30) days of the effective date of the contract necessary to satisfy MQD that the insurance provisions of this contract have been complied with. The Offeror shall complete and submit the Insurance Requirement Certification as provided in Appendix E, which certifies that the Offeror acknowledges the following below discussed insurance requirements.

The policy or policies of insurance maintained by the Contractor shall be written by insurance companies licensed to do business in the State of Hawaii or meet the requirements of Section 431:8-301, Hawaii Revised Statutes, if utilizing an insurance company not licensed by the State of Hawaii.

The policy (ies) shall provide at least the following limit(s) and coverage:

**Table 5-1 Insurance Coverage**

COVERAGE	LIMITS
Commercial General Liability	\$1 million per occurrence, and \$2 million in the aggregate
Automobile	May be combined single limit: Bodily Injury: \$1 million per person, \$1 million per accident Property Damage: \$1 million per accident
Workers Compensation / Employers Liability (E.L.)	Workers Comp: Statutory Limits E.L. each accident: \$1 million



COVERAGE	LIMITS
	E.L. disease: \$1 million per employee, \$1 million policy limit E.L. \$1 million aggregate
Professional Liability	\$1 million per claim \$2 million annual aggregate

Each insurance policy required by this contract shall contain the following clauses, which shall also be reflected on the Certificate of Insurance:

- "The State of Hawaii is an additional insured with respect to operations performed for the State of Hawaii."
- "Any insurance maintained by the State of Hawaii shall apply in excess of, and not contribute with, insurance provided by this policy."

Automobile liability insurance shall include coverage for the Contractor's employees who rent or use their own vehicles in the course of their employment.

MQD agrees to take all necessary steps to maintain the confidentiality of any such policies made available by Contractor under the terms of this paragraph, to the extent allowed or required by law.

The Contractor shall provide prompt written notice to MQD should any of the insurance policies be cancelled, limited in scope, or not be renewed upon expiration to the extent affecting Contractor's compliance with the requirements hereunder.

Failure of the Contractor to provide and keep in force the insurance required under this section shall be regarded as a material default under this contract, entitling MQD to exercise any or all of the remedies provided in this contract for a default of the Contractor.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder or to fulfill the indemnification provisions and requirements of this contract.



If the Contractor is authorized by MQD to subcontract, subcontractors are not excused from the indemnification and / or insurance provisions of this contract. To indemnify the State of Hawaii, the Contractor agrees to require its subcontractors to obtain insurance in accordance with this section.

#### 50.31 Waiver of Subrogation

Offeror shall agree by entering into a contract with DHS to provide a Waiver of Subrogation for the Commercial General Liability, Automobile Liability, and Workers Compensation policies. When required by the insurer or should a policy condition not permit Offeror to enter into a pre-loss agreement to waive subrogation without an endorsement, the Offeror shall agree to notify the insurer and request the policy be endorsed with a Waiver of Subrogation in favor of DHS. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Offeror enter into such an agreement on a pre-loss basis.

#### 50.40 **Inspection of Work Performed**

MQD, CMS, the State Auditor of Hawaii, the U.S. Department of Health and Human Services (DHHS), the General Accounting Office (GAO), the Comptroller General of the United States, the Office of the Inspector General (OIG), and the Medicaid Fraud Control Unit of MQD of the Attorney General or their authorized representatives shall, during normal business hours, have the right to enter into the premises of an Offeror and / or all subcontractors and providers, or such other places where duties under the contract are being performed, to inspect, monitor, or otherwise evaluate the work being performed. All inspections and evaluations shall be performed in such a manner as to not unduly delay the Contractor's work.

#### 50.50 **Wages, Hours, and Working Conditions of Employee Providing Services**

Before an Offeror enters into a contract in excess of \$25,000, the Offeror shall certify that it complies with Section 103-55, HRS, Wages, hours, and working conditions of employees of Offerors performing services. The Offeror shall complete and



submit the Wage Certification as provided in Appendix E of the RFP, pursuant to Section 103-55, HRS.

#### **50.60 Standards of Conduct**

The Contractor shall execute the Contractor's Standards of Conduct Declaration, a copy of which is found in Appendix D, and which shall become part of the contract between the Contractor and the State.

#### **50.70 Confidentiality of Information**

In addition to the requirement of General Conditions 24, the Contractor understands that the use and disclosure of information concerning the provider is restricted to purposes directly connected with the administration of the Hawaii Medicaid EHR Incentive program and agrees to guard the confidentiality of the providers' information as required by law.

The Contractor shall not disclose confidential information to any individual or entity except in compliance with the following:

- 42 CFR Part 431, Subpart F
- The Administrative Simplification provisions of HIPAA and the regulations promulgated there under, including but not limited to the Security and Privacy requirements set forth in 45 CFR Parts 160, 162 and 164, (if applicable).
- HRS Section 346-10.
- All other applicable Federal and State statutes and administrative rules, including but not limited to:
  - HRS Section 325-101 relating to persons with HIV / AIDS;
  - HRS Section 334-5 relating to persons receiving mental health services;
  - HRS Section 577A relating to emergency and family planning services for minor females;
  - Chapter 487J, HRS, relating to social security numbers; and
  - Chapter 487N, HRS, relating to personal information.



Access to member identifying information shall be limited by the Contractor to persons or agencies that require the information to perform their duties in accordance with this contract, including DHHS, MQD, and other individuals or entities as may be required by MQD.

Any other party shall be granted access to confidential information only after complying with the requirements of State and Federal laws, including HIPAA and regulations pertaining to such access. The Contractor is responsible for knowing and understanding the confidentiality laws listed above as well as any other applicable laws.

The Contractor is a "business associate" of MQD, as that term is defined under the HIPAA regulations, 45 CFR §160.103. Therefore, the Contractor agrees to comply with the terms of the Business Associate Agreement found in Appendix E.

The Contractor is cautioned that State and Federal Medicaid rules, and some other State and Federal statutes and rules, including but not limited to those listed above, are often more stringent than the HIPAA regulations. Moreover, for purposes of this contract, the Contractor agrees that the confidentiality provisions contained in HAR Chapter 17-1702 shall apply to the Contractor to the same extent as they apply to MQD.

The Contractor shall implement a secure electronic mail (email) encryption solution to ensure confidentiality, integrity, and authenticity of email communications that contain information relating to members.

## **50.80 Subcontractors Agreements**

The Contractor may negotiate and enter into contracts or agreements with subcontractors (with prior written consent of MQD) to the benefit of the Contractor and the State as long as the subcontractors meet all established criteria and provide the services in a manner consistent with the minimum standards specified. All such agreements shall be in writing and shall specify the activities and responsibilities delegated to the subcontractor. The contracts must also include provisions for revoking delegation or imposing other sanctions if the subcontractor's performance is inadequate. Certain subcontracts, including but not limited to Quality Assurance



activities, must be approved by MQD prior to implementation. MQD reserves the right to inspect all subcontractor agreements at any time during the contract period. Any subcontract may be subject to MQD's prior review and approval. The Contractor's subcontractor shall submit to the Contractor a tax clearance certificate from the Director of MQD of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State law against the subcontractor / provider have been paid.

No subcontract or agreement that a Contractor enters into with respect to the performance under this contract shall in any way relieve a Contractor of any responsibility for any performance required of it by this contract. The Contractor shall provide MQD immediate notice in writing by registered or certified mail of any action or suit filed against it by any subcontractor or provider, and prompt notice of any claim made against any Contractor may result in litigation related in any way to the contract with the State of Hawaii. The Contractor shall designate itself as the sole point of recovery for any subcontractor or provider.

The Contractor shall notify MQD at least fifteen (15) days prior to adding or deleting subcontractor agreements or making any change to any provider or subcontractor agreements which may materially affect the Contractor's ability to fulfill the terms of this contract.

All agreements or contracts with the subcontractors shall be finalized and fully executed within thirty (30) days of the contract award. MQD reserves the right to review any subcontractor contracts or agreements prior to the notification of award of the contract.

All subcontracts shall require that the subcontractors agree to comply with the confidentiality requirements imposed by this RFP, to the extent subcontractors or providers render services or perform functions that make such provisions applicable to such agreements.



## **50.90 Payment**

The Contractor shall submit an original invoice and one copy for services performed to:

Department of Human Services  
Med-QUEST Division / Finance Office  
1001 Kamokila Boulevard, Suite 317  
Kapolei, Hawaii 96707

### **50.91 Other Payments**

No other payments will be made for deliverables or services provided under this contract without written amendment of the Contract. No separate payment will be made for Project Initiation or Turnover Services.

## **50.100 Use of Funds**

The Contractor shall not use any public funds for purposes of entertainment perquisites and shall comply with any and all conditions applicable to the public funds to be paid under this contract, including those provisions of appropriate acts of the Legislature or by administrative rules adopted pursuant to law.

## **50.110 Termination of the Contract**

This contract may terminate or may be terminated by MQD for any or all of the following reasons in addition to the General Conditions in Appendix C:

- In the event of the insolvency of or declaration of bankruptcy by a Contractor; or
- In the event sufficient appropriated, otherwise unobligated funds no longer exist for the payment of Department obligations hereunder.

Each of these is described in the following subsections.

### **50.111 Termination for Bankruptcy or Insolvency**

In the event that a Contractor shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the





appointment of a receiver for its business or its assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any State relating to insolvency or the protection of the rights or creditors, MQD may, at its option, terminate this contract. In the event MQD elects to terminate a contract under this provision it shall do so by sending notice of termination to the Contractor by registered or certified mail, return receipt requested. The date of termination shall be deemed to be the date such notice is mailed to the Contractor, unless otherwise specified.

50.112 Termination for Unavailability of Funds

Notwithstanding any other provision of this contract, the parties hereto agree that the charges hereunder are payable by MQD solely from appropriations received by MQD from the Legislature of the State of Hawaii. In the event such appropriations are determined, at the sole discretion of the Director of MQD, to no longer to exist, or to be insufficient with respect to the charges payable hereunder, this contract shall terminate without further obligation of MQD as of that moment. In such event, the Director of MQD shall certify to an Offeror the occurrence thereof, and such certification shall be conclusive.

**50.120 Damages, Sanctions and Financial Penalties**

The damages applying to the contract are described in Section 50.121.

50.121 Damages – Failure to Meet Contract Requirements

In the event of any breach of the terms of the contract by the Offeror, liquidated damages shall be assessed against the Offeror in an amount equal to the costs of obtaining alternative Ombudsman services for its eligible beneficiaries. The damages shall include, without limitation, the difference in the administrative fee paid to the Offeror and the fee paid to a replacement Offeror.

Notwithstanding the above, the Offeror shall not be relieved of liability to the State for any damages sustained by the State due to the Offeror's breach of the contract.



The DHS may withhold amounts for liquidated damages from payments to the Offeror until such damages are paid in full.

#### 50.122 Sanctions

The DHS may impose sanctions for non-performance or violations of contract requirements. Sanctions shall be determined by the State and may include:

- Imposing civil monetary penalties (as described below);
- Suspending payment; or
- Terminating the contract (as described in Section 50.110).

The civil or administrative monetary penalties imposed by the DHS on the Contractor shall not exceed the maximum amount established by federal statutes and regulations.

The civil monetary penalties that may be imposed on the Contractor by the State are as follows:

Number	Activity	Penalty
1	Misrepresentation of actions or falsification of information furnished to the CMS or the State	A maximum of one hundred thousand dollars (\$100,000) for each determination
2	Failure to implement requirements stated in the Offeror's proposal, the RFP or the contract, or other material failures in the Offeror's duties	A maximum of fifty thousand dollars (\$50,000) for each determination
3	Misrepresentation or false statements to providers	A maximum of twenty-five thousand dollars (\$25,000) for each determination



Number	Activity	Penalty
4	Violation of any of the other applicable requirements of Sections 1903(m), 1905(t)(3) or 1932 of the Social Security Act and any implementing regulations	A maximum of twenty-five thousand dollars (\$25,000) for each determination
5	Not providing services to the provider because of a discriminatory practice	A maximum of fifteen thousand dollars (\$15,000) for each provider the State determines was not providing services to the provider because of a discriminatory practice
6	Failure to report confidentiality breaches relating to eligible providers to the DHS by the specific deadlines provided in Section 50.70	One hundred dollars (\$100) per day per provider. A maximum of twenty-five thousand dollars (\$25,000) until the reports are received
7	Failure to provide accurate information, data, and reports to the MQD by the specified deadlines provided in Section 40.40	Two hundred dollars (\$200) per day until all required information, data, and reports are received



50.123      **Operational Start Date**

The tentative Contract start date is January 1, 2020.

**50.130      Conformance with Federal Regulations**

Any provision of the contract which conflicts with Federal Medicaid statutes, regulations, or CMS policy guidance is hereby amended to conform to the provisions of those laws, regulations, and Federal policy. Such amendment of the Contract will be effective on the effective date of the statutes or regulations necessitating it and will be binding on the parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties.

**50.140      Force Majeure**

If a Contractor is prevented from performing any of its obligations hereunder in whole or in part as a result of major epidemic, act of God, war, civil disturbance, court order or any other cause beyond its control, the Contractor shall make a good faith effort to perform such obligations through its then-existing facilities and personnel; and such non-performance shall not be grounds for termination for default.

Neither party to this contract shall be responsible for delays or failures in performance resulting from acts beyond the control of such party.

Nothing in this section shall be construed to prevent MQD from terminating this contract for reasons other than default during the period of events set forth above, or for default if such default occurred prior to such event.

**50.150      Prohibition of Gratuities**

Neither a Contractor nor any person, firm, or corporation employed by a Contractor in the performance of this contract shall offer or give, directly or indirectly to any employee or agent of the State of Hawaii, any gift, money, or anything of value, or any promise, obligation, or contract for future reward or compensation at any time during the term of this contract.



**50.160 Attorney's Fees**

In addition to costs of litigation provided for under General Condition 8 (Appendix C), in the event that MQD should prevail in any legal action arising out of the performance or non-performance of this contract, the Contractor shall pay, in addition to any damages, all expenses of such action including reasonable attorney's fees and costs. The term 'legal action' shall be deemed to include administrative proceedings of all kinds, as well as all actions at law or equity.

**50.170 Warranty of Fiscal Integrity**

The Contractor warrants that it is of sufficient financial solvency to assure MQD of its ability to perform the requirements of the contract. The Contractor shall provide sufficient financial data and information to prove its financial solvency.

**50.180 Warranty of Solution**

The Solution shall be warranted to conform to technical, business and other specifications agreed upon at the time the proposal is submitted, and the Contract is awarded. The Contractor shall, at its own expense, correct any non-conformance of the Solution, provided that the State notifies the Contractor when the software is found to be nonconforming, upon acceptance testing, or within three (3) months after the first production following implementation. During this phase, the Contractor must work closely with the State technical and business staff to resolve issues with the Solution.

**50.190 Authority**

Each party has full power and authority to enter into and perform this contract, and the person signing this Contract on behalf of each party certifies that such person has been properly authorized and empowered to enter into this contract. Each party further acknowledges that it has read this contract, understands it, and agrees to be bound by it.



## **Section 60 TECHNICAL PROPOSAL**

### **60.10 Introduction**

The following sections describe the required content and format for the technical proposal. These sections are designed to ensure submission of information essential to understanding and evaluating the proposal. There is no intent to limit the content of the proposal, which may include any additional information deemed pertinent.

The mandatory proposal shall include the following sections:

- Offer Form (Appendix A)
- Transmittal letter
- Financial Status

The technical proposal shall include the following sections:

- Executive summary
- Company background and experience
- Organization and staffing

### **60.20 Offer Form**

The Offer Form (refer to Appendix A) shall be signed by an individual authorized to legally bind the Offeror and included in this section

### **60.30 Transmittal Letter**

The transmittal letter shall be on official business letterhead and shall be signed by an individual authorized to legally bind the Offeror. It shall include:

- A statement indicating that the Offeror is a corporation or other legal entity. All subcontractors shall be identified, and a statement included indicating the percentage of work to be



performed by the prime Offeror and each subcontractor, as measured by percentage of total contract price. If subcontractors will not be used for this contract, a statement to this effect shall be included;

- A statement that the Offeror is/will be registered to do business in Hawaii and has or will obtain a State of Hawaii General Excise Tax License by the start of work. Provide the Hawaii Excise Tax number (if applicable);
- A statement identifying all amendments and addenda to this RFP issued by the issuing office and received by the Offeror. If no amendments or addenda have been received, a statement to that effect should be included;
- A statement of affirmative action that the Offeror does not discriminate in its employment practices with regard to race, color, religion, creed, ancestry, marital status, age, sex including gender identity or expression, sexual orientation, national origin, arrest and court records, or mental or physical handicap, except as provided by law;
- A statement that neither cost nor pricing is included in this letter or the technical proposal;
- A statement that no attempt has been made or will be made by the Offeror to induce any other party to submit or refrain from submitting a proposal;
- A statement that the person signing this proposal certifies that he or she is the person in the Offeror's organization responsible for, or authorized to make, decisions as to the prices quoted, that the offer is firm and binding, and that he or she has not participated and will not participate in any action contrary to the above conditions;
- A statement that the Offeror has read, understands and agrees to all provisions of this RFP; and
- A statement that it is understood that if awarded the contract, the offeror's organization will deliver the goods and services meeting or exceeding the specifications in the RFP and amendments.



## **60.40 Financial Status**

The financial status of an Offeror and related entities shall be reviewed to determine the financial solvency of the organization. Financial statements for the applicable legal entity and any subcontractor that is providing at a minimum of 20% of the work shall be provided for each of the last two years, including at a minimum:

- Balance Sheets
- Profit and Loss Statements
- Auditor's report

If an Offeror seeks confidentiality on a part of a submission, each page of the section of that submission which is sought to be protected must be marked as "Proprietary" and an explanation of how substantial competitive harm would occur if that information was released upon request. If the explanation is sufficient, then, to the extent permitted by the exemptions in Section 92F-13, HRS, 45 CFR Part 5, Office of Information Practices, or a Court, the affected section may be deemed confidential. Blanket labeling of the entire document as "Proprietary," however, is inappropriate.

## **60.50 Executive Summary**

The executive summary should provide MQD with a broad understanding of the entire proposal. The executive summary shall clearly and concisely condense and highlight the contents of the technical proposal.

## **60.60 Company Background and Experience**

The company background and experience section shall include for an Offeror and each subcontractor (if any): details of the background of the company and its size and resources, and details of company experience relevant to this RFP.





## 60.61 Background of the Company

A description of the history of the company and Offeror including:

- A general description of the primary business of your organization and its beneficiary base
- A brief history and current company ownership including the ultimate parent organization and major shareholders/principals. Include date incorporated or formed and corporate domicile. An out-of-state Offeror must become duly qualified to do business in the State of Hawaii before a contract can be executed
- Ownership of the company, including the officers of the Corporation, and the names and address of its registered agent
- Home office location and all other offices (by city and state)
- Location of office from which any contract would be administered
- Name, address and telephone number of the Offeror's point of contact for a contract resulting from this RFP
- Number of employees both locally and nationally
- The size of organization in assets, revenue and people
- The areas of specialization

## 60.62 Company Experience

The details of company experience including subcontractor experience, relevant to the proposal shall cover and include but not limited to:

- Process Medicaid provider application form, DHS 1139
- Provider Relation



- Call Center operation and monitor
- Working with HPMMIS

## **60.70 Organization and Staffing**

The organization and staffing section shall include organization charts of proposed personnel and resumes of all management, supervisory and key personnel. The information should provide the MQD with a clear understanding of the organization, functions of key personnel and on-site personnel during start-up and on-going operations.

The Offeror shall provide an estimate of the proposed number of staff, hours and resources to be engaged to complete the contracted activities.

### **60.71 Organization Charts**

The organization charts shall show:

- The structure of the project team and identifies the proposed project personnel
- Relationships of an Offeror to related entities if subcontractor will be used
- All proposed key personnel, including an indication of their major areas of responsibility and position within the organization
- Geographic location of the Offeror's personnel

### **60.72 Staffing**

The resumes of key project manager shall include, if applicable:

- Experience with the Hawaii Medicaid providers
- Experience in HPMMIS input and process
- Provider relation and education



- Names, position titles and phone numbers of references who can provide information on the individuals' experience and competence
- Other relevant experience

The contractor should have a responsible staff who can perform network services and at the minimum meet the following experience requirements:

- Minimum 5 years of experience with direct information technology support of a Medicaid agency
- Minimum 5 years of experience working with Hawaii government
- Minimum 5 years of experience in network and systems security
- Minimum 10 years of experience managing and offering information technology help desk support
- Minimum 10 years in LAN/WAN networking, systems administration and supporting endpoint computing (e.g., laptops, computer, etc.)
- Minimum 10 years working with hardware and software installation and configuration
- Experience with Windows Server 2003 and later
- Experience with VMware Enterprise
- Experience with Storage Area Network

The Offeror may use its own staff or use a subcontractor to perform the network services. The Offeror shall identify its subcontractor(s) within one month of notice of award, the Offeror must submit its final network of subcontractors to the MQD. Failure to meet the requirements of the contract will result in a delay in implementation of the contract.



## **Section 70 BUSINESS PROPOSAL**

### **70.10 Introduction**

The Offeror shall provide a cost for the scope of work specified in the RFP. The Offer submitted will be the Offeror's best and final offer. The business proposal shall include the total cost of proposal, see Appendix G.

### **70.20 Pricing Requirements**

The business proposal shall include the following information:

#### **70.21 Total Proposal Price**

This section shall present the Offeror's proposal price of this contract.

The total price for the proposal shall be the sum of the total price for each of the project components. The price shall be for:

January 1, 2020 - December 31, 2020



## **Section 80            EVALUATION, SELECTION, AND APPROVAL**

### **80.10            Introduction**

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

### **80.20            Evaluation Process**

The DHS shall establish an evaluation committee that shall evaluate designated sections of the proposal. The committee shall consist of members who are familiar with the program and the minimum standards or criteria for the particular area. Additionally, the DHS may, at its discretion, designate additional representatives to assist in the evaluation process. The committee shall evaluate the proposal and document their comments, concerns and questions.

### **80.30            Mandatory Proposal Evaluation**

Each proposal shall be evaluated to determine whether the requirements as specified in this RFP have been met. The proposal shall first be evaluated against the following criteria:

- Proposal was submitted within the closing date and time for proposals as required in Section 20.10;
- The proper number of separately bound copies are in sealed envelopes as required in Section 20.100;
- All information required in Section 60 has been submitted;
- Ability for Offeror and their subcontractors, if applicable, to remain solvent for the length of the contract in accordance with information submitted for Section 60.40; and
- Proposal contains the necessary information in the proper order.

A proposal must meet all mandatory requirements prior to the technical evaluation. Any proposal that does not meet all mandatory requirements shall be rejected.



## **80.40 Proposal Evaluation**

The proposals that have met the minimum mandatory requirements shall be evaluated in order to identify those Offerors that meet the minimum technical requirements detailed in this section.

<b><u>Evaluation Categories</u></b>	<b>Available Points</b>
<b>Offer Form (OF-1)</b>	Pass/Fail
<b>Transmittal Letter</b>	Pass/Fail
<b>Financial Status</b>	Pass/Fail
 <b>Proposal Application</b>	
Executive Summary	10 points
Company Background and Experience	20 points
Organization and Staffing	25 points
Network Services	10 points
Business Proposal	35 points
 <b>TOTAL POSSIBLE POINTS</b>	 <b>100 points</b>



## 80.50 Technical Evaluation Criteria

Each evaluated category shall be given a rating score using the following rating system:

Table 8-1 Scoring

<u>Rating Score</u>	<u>Description</u>
5	The response has no deficiencies and provides a detailed and comprehensive description that demonstrates the ability to more than minimally meet the contractual requirements.
4	The response has no deficiencies and describes how the requirements will be minimally met.
3	The response has no major deficiencies and only minor deficiencies that are easily correctable.
2	The response has one major deficiency and/or multiple minor deficiencies that do not appear to be easily correctable.
1	The response has multiple major deficiencies that do not appear to be correctable.
0	No response provided.

The Evaluation Committee scores each criterion with a 0, 1, 2, 3, 4, or 5. No fractional scores will be allowed. Scores will be based on the content as communicated in the proposal. Unclear and disorganized presentation of information may impact the evaluators' ability to clearly understand the responsiveness to proposal requirements.

A comment section is provided on the Technical Evaluation Scoring Form. The Evaluation Committee must record a comment for any score of 1, 2, 3 or 5. Comments for criteria receiving a score of 4 are not required.

The Offeror must receive a rating score of 3 for each Evaluation Category or the proposal will not be considered technically



acceptable and shall be rejected. Those proposals that do not meet the minimum points to pass each of the required criteria shall be returned to the applicant with a letter of explanation.

The rating score (0-5) shall represent the corresponding conversion factor used to calculate the points awarded for each Evaluation Category listed in section 80.40, as follows:

<u>Rating Score</u>	<u>Conversion Factor</u>
0	0
1	25%
2	50%
3	75%
4	88%
5	100%

The total maximum number of points available for each Evaluation Category will be multiplied by the applicable conversion factor, based on the rating score given, to determine the number of points awarded for the Evaluation Category. The points awarded for each Evaluation Category shall be totaled to yield a final score. The Offeror with the highest final score shall be awarded the contract.

Scoring will be based on the entire content of the proposal and the information as communicated to the evaluators. The information contained in any part of the proposal may be evaluated by the DHS with respect to any other scored section of the proposal. Lack of clarity and inconsistency in the proposal will impede effective communication of the content and may result in a lower score.

The broad criteria for each Evaluation Category are listed below and includes consideration of the specific elements identified in Section 60. MQD reserves the right to add, delete or modify any criteria in accordance with applicable procurement rules.





All proposals that meet a minimum score of 75% on the technical proposal evaluation shall be evaluated according to Section 80.100 for its business proposal.

80.51 Offer Form (OF-1) (Pass/Fail)

- Signed by an individual authorized to legally bind the Offeror and affixed with a corporate seal;
- Includes all statements as specified in Section 60.20.

If the offer form is incomplete, the proposal will be rejected and not be scored and will be returned to the Offeror since this is part of the mandatory requirements established in Section 80.30.

80.52 Transmittal Letter (Pass/Fail)

- On an official letterhead and signed by an individual authorized to legally bind the Offeror; and
- Includes all statements as specified in Section 60.30.

If the Transmittal Letter is incomplete, the proposal will be rejected and not be scored and will be returned to the Offeror since this is part of the mandatory requirements established in Section 80.30.

80.53 Financial Status (Pass/Fail)

- The financial status of an Offeror and related entities shall be reviewed in order to determine the financial solvency of the organization. Quality care cannot be provided without adequate resources; and
- Other factors identified in section 60.40.

If the Financial Status is incomplete, the proposal will be rejected and not be scored and will be returned to the Offeror since this is part of the mandatory requirements established in Section 80.30.



**80.60 Executive Summary (10 points possible)**

- Provides a broad understanding of the proposal;
- Clearly and concisely condenses the proposal;
- Highlights the contents of the technical proposal; and
- Identifies how the Offeror will implement the Medicaid provider application function with the RFP requirements if a contract is awarded to them.

**80.70 Company Background and Experience (20 points possible)**

- Company background and experience including experience implementing a program of the nature/size required by this contract;
- Each subcontractor's background and experience;
- Extent to which the scope of services under this RFP can be completed by the Offeror;
- Experience in working with providers located in the State of Hawaii;
- Offeror's ability to meet the contract requirements; and
- Include all the required information described in Section 60.72 for both themselves and each subcontractor.

**80.80 Organization and Staffing (25 points possible)**

- Past and current management experience for similar services of like projects in scope;
- Relevant program experience and success in performing projects of similar scope to that described herein;
- Competence of proposed key professionals and other employees;
- Qualifications of personnel including education, experience with Medicaid providers, length of time with the organization, and Hawaii Medicaid experience. (Resumes of all key personnel must be provided.);
- Quality of references of key personnel;
- Offeror has a place of business in the State of Hawaii;



- Capability of organizational and administrative systems located in Hawaii to implement contractual obligations for this RFP;
- Describe how the Offeror's personnel will resolve provider's application questions timely;
- Number of Offeror's personnel residing in the State of Hawaii that is sufficient to implement the operations described in Section 40;
- How the Offeror's resources identified and allocated will fulfill the requirements of the contract; and
- Include all the required information described in Section 60.

#### **80.90 Network Services (10 points possible)**

Proposal will be examined on the following:

- Capability of providing information technology and user help desk support with ability to respond promptly to support request
- Technical expertise in systems administration, systems engineering, systems and network security, and network engineering technical expertise with Windows Server, VMware and Windows 10 Pro workstations
- Technical expertise in hardware and software deployment, management, and support

#### **80.100 Business Proposal Evaluation (35 points possible)**

Each proposal will be examined to ensure that all required pricing schedules have been included by the Offeror. Proposals will be evaluated to ensure that reasonable firm fixed prices have been assigned. The points shall be given by the chart below:

	Lowest Proposal	2 <sup>nd</sup> Lowest Proposal	3 <sup>rd</sup> Lowest Proposal	4 <sup>th</sup> Lowest or More
Two Offerors	35	25		
Three Offerors	35	25	15	
Four Offerors	35	25	15	5

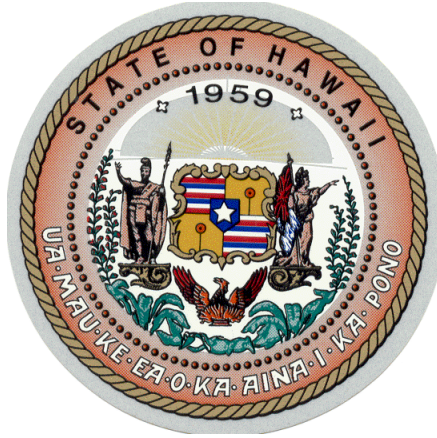


## **80.110 Contract Award**

The technical and business proposal scores will be combined to determine the winning proposal. The Offeror with the highest score will be awarded the contract.

Upon selection of the Offeror, the DHS shall initiate the contracting process. The Offeror shall be notified in writing that the contract is awarded and that the DHS intends to contract with them. This letter shall serve as notification that the Offeror should begin to develop its programs, materials, policies and procedures for the program.

The contracts shall be awarded according to the Contract Award date identified in Section 20.10, Table 2-1.



STATE OF HAWAII  
Department of Human Services  
REQUEST FOR PROPOSAL (RFP)

**Medicaid Provider Enrollment and  
Revalidation  
RFP-MQD-2020-005  
APPENDICES**



Med-QUEST Division – Health Care Services Branch

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## APPENDIX A - OFFER FORM

### Medicaid Provider Enrollment and Revalidation Offer Form (OF-1) (RFP-MQD-2020-005)

Department of Human Services  
Med-QUEST Division  
1001 Kamokila Blvd. Suite 317  
Kapolei, Hawaii 96707

Dear Sir:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications and Special Provisions attached hereto, and in the General Conditions, Form AG-008-GC (04/15/09), by reference made a part hereof and available upon request; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived without collusion.

Offeror is:

☐ Sole Proprietor      ☐ Partnership      ☐ \*Corporation      ☐ Joint Venture

☐ Other \_\_\_\_\_

\*State of incorporation \_\_\_\_\_

Federal I.D. No.: \_\_\_\_\_

Hawaii General Excise Tax License I.D. No.: \_\_\_\_\_

Payment address (other than street address below): \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Business address (street address): \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Respectfully submitted,

**(x)** \_\_\_\_\_

Authorized (Original) Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
Name and Title (Please Print or Type)

Telephone No.: \_\_\_\_\_

Fax No: \_\_\_\_\_

\_\_\_\_\_  
Exact Legal Name of Company (Contractor)

Email Address:

\_\_\_\_\_  
\*If Offeror is a "d.b.a." or a "division" of a corporation, furnish the exact legal name of the corporation under which the contract, if awarded, will be executed:

\_\_\_\_\_

\_\_\_\_\_

## APPENDIX B - WRITTEN QUESTIONS FORM

### Medicaid Provider Enrollment and Revalidation RFP-MQD 2020-005

OFFEROR NAME	DATE SUBMITTED	QUESTION #	RFP SECTION #	RFP PAGE #	PARAGRAPH	QUESTION



## **APPENDIX C - GENERAL CONDITIONS**

## GENERAL CONDITIONS

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## GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
  - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
  - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of 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 State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
  - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
  - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, 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 Contract.
  - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
  - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, 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.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

- b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
  - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
- 7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
  - 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
  - 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
  - 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
  - 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
  - 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
    - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
  - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
  - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

### 13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

- d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
  - (A) Contract prices for goods or services accepted under the Contract;
  - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
  - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
  - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the



total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:

- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.

- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, 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 HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. 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.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
    - (A) Changes in the work within the scope of the Contract; and
    - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
  - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
  - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
  - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
  - g. Head of the purchasing agency approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.
  - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
  - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
  - (2) Method of delivery; or
  - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Contract or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
  - (1) Description of performance (Attachment 1);
  - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
  - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
  - (5) Method of shipment or packing of supplies; or
  - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
  - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
  - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
  - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, 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 STATE.
  - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
  - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
  - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, 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 Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. 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 Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
  - (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
  - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
  - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
  - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:



- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

**APPENDIX D- CONTRACTOR'S STANDARDS OF CONDUCT  
DECLARATION**



# STATE OF HAWAII

## CONTRACTOR'S STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"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 per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of \_\_\_\_\_, CONTRACTOR, the undersigned does declare as follows:

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

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract 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.

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

### CONTRACTOR

By \_\_\_\_\_

(Signature)

Print Name \_\_\_\_\_

Print Title \_\_\_\_\_

Name of Contractor \_\_\_\_\_

Date \_\_\_\_\_

## **APPENDIX E – PROPOSAL FORMS**

Appendix E – Forms contains the following disclosure statements:

- E.1 – Wage Certification
- E.2– Insurance Requirements Certification
- E.3 – Business Associate Agreement

## **Appendix E.1 - WAGE CERTIFICATION**

Pursuant to Section 103-55, Hawaii Revised Statutes, I hereby certify that if awarded the contract in excess of \$25,000, the services to be performed will be performed under the following conditions:

1. The services to be rendered shall be performed by employees paid at wages or salaries not less than wages paid to the public officers and employees for similar work, if similar positions are listed in the classification plan of the public sector.
2. All applicable laws of the Federal and State governments relating to worker's compensation, unemployment insurance, payment of wages, and safety will be fully complied with.

I understand that all payments required by Federal and State laws to be made by employers for the benefit of their employees are to be paid in addition to the base wages required by Section 103-55, HRS.

Offeror: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **Appendix E.2 - INSURANCE REQUIREMENTS CERTIFICATION**

Proposals submitted in response to the RFP must include a Certificate of Liability Insurance (COLI) that meets the requirements of the RFP, summarized in the Checklist and sample Form Acord 25 attached hereto. The successful bidder will be required to provide an updated COLI upon contract award.

Time is of the essence in the execution and performance of the contract resulting from this RFP. Therefore, the Offeror must ensure that the COLI submitted with the proposal and, if applicable, the resulting contract, fully and timely complies with the insurance requirements of this RFP.

By signing below, the Offeror certifies that it has completed the attached Checklist and:

(Check and complete one)

- ☐ Offeror has included a current COLI with its proposal that fully meets the insurance coverage requirements contained in the RFP and in the attached Checklist.
- ☐ Offeror has included a current COLI with its proposal that meets the insurance coverage requirements contained in the RFP and in the attached Checklist and Form, *except for the following* (explain in detail):

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If Offeror is awarded a contract, then Contractor certifies that the foregoing deficiencies will be corrected within 30 days after contract award.

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Name of Offeror

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Authorized Representative Signature

Date

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Print Name and Title

CERTIFICATE OF LIABILITY INSURANCE (COLI)  
CHECKLIST & SAMPLE FORM (ACORD 25 Form (2009/09)<sup>1</sup>)

This Checklist must accompany the completed COLI submitted with the proposal and subsequent contract. In the event of a conflict between this Checklist and the terms of the contract, the latter shall prevail.

If a requirement noted below is reflected in a current policy endorsement, a copy of the endorsement may be submitted in lieu of the statement on the COLI. Insurance requirements are subject to oversight by the State of Hawaii Department of Accounting and General Services, Risk Management Office.

<b>NO.</b>	<b>CERTIFICATE OF INSURANCE LIABILITY REQUIRED ELEMENTS</b>	<b>✓</b>
(1)	The date the COLI was issued should not be more than 15 days from date the of request. The COLI should not be issued over 30 days from the date of submission.	
(2)	The name of the "Insured" must match the name of the Contractor/Provider.	
(3)	The insurer must be licensed to do business in the State of Hawaii or meet the requirements of Section 431:8-301, Hawaii Revised Statutes.	
(4)	The "Commercial General Liability" coverage should indicate coverage on a "Per Occurrence" basis.	
(5)	A "Policy Number" or binder number should be indicated.	
(6)	The "Effective Date" should be no later than the contract date or the first date that the Contractor commences work for the State.	
(7)	The "Expiration Date" should be after the effective date of the agreement or supplemental agreement, as applicable, and be monitored to ensure that renewal COLI are received on a timely basis.	
(8)	The Limits of Liability for the following types of coverage should be for at least as much as required by the contract, normally in the following amounts (check contract language for specifics):  a. Commercial General Liability \$1 million per occurrence, and \$2 million in the aggregate	

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<sup>1</sup> The Contractor should use the Acord form currently in use at the time of submission with the contract.

NO.	CERTIFICATE OF INSURANCE LIABILITY REQUIRED ELEMENTS	✓
	<p>b. Automobile – may be combined single limit:  Bodily Injury: \$1 million per person, \$1 million per accident  Property Damage: \$1 million per accident</p> <p>c. Workers Compensation/Employers Liability (E.L.)  E.L. each accident: \$1 million  E.L. disease: \$1 million per employee, \$1 million policy limit  E.L. \$1 million aggregate</p> <p>d. Professional Liability  \$1 million per claim, and  \$2 million annual aggregate</p>	
(9)	<p>“Any Auto” coverage is required, or if not marked, “Hired Autos” and “Non-Owned Autos” should be indicated. If there are no corporate-owned autos, then the “Hired &amp; Non-Owned Auto” may be endorsed to the Commercial General Liability to satisfy this requirement.</p>	
(10)	<p>If the limits of liability shown for General Liability or Automobile Liability are less than required by contract, then Umbrella Liability with combined limit may satisfy the minimum requirement and the State listed as “Additional Insured” on the Umbrella Policy or the Umbrella policy is noted as “Follow Form” on the certificate.</p>	
(11)	<p>NOTE: The State requires higher limits of \$1 million, as compared to the basic limits required by State law regarding Workers Compensation coverage.</p>	
(12)	<p>The required “Professional Liability” coverage should be indicated in this section.</p>	
(13)	<p>The “ADDL INSR” box should be checked to indicate that the State is an additional insured under the policy(ies), or noted in the Description of Operation box at the bottom of the form.</p>	
(14)	<p>The “Certificate Holder” should be the name and address of the Department of Human Services/Med-QUEST Division, 1001 Kamokila Blvd, Suite 317, Kapolei, Hawaii 96707.</p>	



NO.	CERTIFICATE OF INSURANCE LIABILITY REQUIRED ELEMENTS	✓
(15)	<p>The COLI should be signed by the insurance agent or an insurance company representative.</p> <p>DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES box: This section should contain the following language:</p> <p style="padding-left: 40px;">The State of Hawaii is an additional insured with respect to operations performed for the State of Hawaii.</p> <p style="padding-left: 40px;">Any insurance maintained by the State of Hawaii shall apply in excess of, and not contribute with, insurance provided by this policy.</p>	

## APPENDIX E.3 – BUSINESS ASSOCIATE AGREEMENT

### BUSINESS ASSOCIATE AGREEMENT

The State of Hawaii Department of Human Services (STATE) has determined that it is a Covered Entity or a Health Care Component of a Covered Entity under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), as amended, and its implementing regulations at 45 CFR parts 160 and 164 (the HIPAA Rules).

The CONTRACTOR/PROVIDER (BUSINESS ASSOCIATE), under the CONTRACT will provide to STATE certain services described in the CONTRACT to which this Exhibit \_\_\_\_\_ is attached, and may have access to Protected Health Information (PHI) (as defined below) in fulfilling its responsibilities under the CONTRACT. To the extent BUSINESS ASSOCIATE needs to create, receive, maintain or transmit PHI to perform services under the CONTRACT, it will be acting as a Business Associate<sup>1</sup> of STATE and will be subject to the HIPAA Rules and the terms of this Business Associate Agreement (this Agreement).

In consideration of STATE's and BUSINESS ASSOCIATE's (collectively referred to as "the Parties") continuing obligations under the CONTRACT, and the provisions below, the Parties agree as follows:

#### 1. DEFINITIONS.

Except for terms otherwise defined herein, and unless the context indicates otherwise, any capitalized terms used in this Agreement and the terms "person," "use," and "disclosure" shall have the same meaning as defined by the HIPAA Rules. An amendment to the HIPAA Rules that modifies any defined term, or which alters the regulatory citation for the definition, shall only be incorporated into this Agreement by written ratification of the Parties.

Breach<sup>2</sup> means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule or as provided for by this Agreement, which compromises the security or privacy of the PHI.

An acquisition, access, use, or disclosure of PHI in a manner not permitted by the Privacy Rule is presumed to be a breach unless the BUSINESS ASSOCIATE demonstrates to the STATE's satisfaction that there is a low probability that the PHI has been compromised based on a risk assessment that identifies at least the following: (i) the nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification; (ii) the unauthorized person who used the PHI or to whom the disclosure was made; (iii) whether the PHI was actually acquired or viewed; and (iv) the extent to which the risk to the PHI has been mitigated.

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<sup>1</sup> Business Associate is defined at 45 CFR §160.103

<sup>2</sup> Breach: 45 CFR §164.402.

Breach excludes:

- A. Any unintentional acquisition, access or use of PHI by a Workforce member or person acting under the authority of the BUSINESS ASSOCIATE if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
- B. Any inadvertent disclosure by a person who is authorized to access PHI at the BUSINESS ASSOCIATE to another person authorized to access PHI at the same BUSINESS ASSOCIATE, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the Privacy Rule.
- C. A disclosure of PHI where the BUSINESS ASSOCIATE has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

Designated Record Set means records, including but not limited to PHI maintained, collected, used, or disseminated by or for the STATE relating to (i) medical and billing records about Individuals maintained by or for a covered Health Care Provider, (ii) enrollment, Payment, claims adjudication, and case or medical management records systems maintained by or for a Health Plan, or (iii) that are used in whole or in part by the STATE to make decisions about Individuals.<sup>3</sup>

Electronic Protected Health Information (EPHI) means PHI that is transmitted by Electronic Media or maintained in Electronic Media.<sup>4</sup>

HIPAA Rules shall mean the Privacy, Security, Breach Notification, and Enforcement Rules in 45 CFR Parts 160 and 164.

Individual shall have the same meaning as defined in 45 CFR §160.103, and shall include a person who qualifies as a personal representative as provided by 45 CFR §164.502(g).

Privacy Rule means the HIPAA Standards for Privacy of Individually Identifiable Health Information found at 45 CFR part 160, and part 164, subparts A and E.

Protected Health Information (PHI) means any oral, paper or electronic information, data, documentation, and materials, including, but not limited to, demographic, medical, genetic, and financial information that is created or received by a Health Care Provider, Health Plan, Employer, or Health Care Clearinghouse, and relates to the past, present, or future physical or mental health or condition of an Individual; the provision of health care to an Individual; or the past, present, or future payment for the provision of health care to an Individual; and that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual. For purposes of this Agreement, the term

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<sup>3</sup> Designated Record Set: 45 CFR §164.501.

<sup>4</sup> Electronic Protected Health Information: 45 CFR §160.103

Protected Health Information is limited to the information created, maintained, received, or transmitted by BUSINESS ASSOCIATE on behalf of or from the STATE under the CONTRACT. Protected Health Information includes without limitation EPHI, and excludes education records under 20 U.S.C. §1232(g), employment records held by the STATE as an employer, and records regarding an Individual who has been deceased for more than 50 years.<sup>5</sup>

Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system under 45 CFR §164.304.

Security Rule means the HIPAA Security Standards for the Protection of Electronic Protected Health Information found at 45 CFR part 160, and part 164, subpart C.

Unsecured Protected Health Information means protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of Public Law 111-5.<sup>6</sup>

## **2. BUSINESS ASSOCIATE'S OBLIGATIONS.**

BUSINESS ASSOCIATE agrees to:

- a. Not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law. In no event may BUSINESS ASSOCIATE use or further disclose PHI in a manner that would violate the Privacy Rule if done by the STATE, except as expressly provided in this Agreement and as required by 45 CFR §§ 164.502(a)(3), 164.502(a)(4) and 164.504(e)(2)(ii)(A).
- b. Implement appropriate safeguards, and comply, where applicable, with the Security Rule to ensure the confidentiality, integrity, and availability of all EPHI the BUSINESS ASSOCIATE creates, receives, maintains, or transmits on behalf of the STATE; protect against any reasonably anticipated threats or hazards to the security or integrity of such information; prevent uses or disclosures of such information other than as provided for by this Agreement or as Required by Law; and ensure compliance with the HIPAA Rules by BUSINESS ASSOCIATE's Workforce.<sup>7</sup> These safeguards include, but are not limited to:
  - (i) Administrative Safeguards. BUSINESS ASSOCIATE shall implement policies and procedures to prevent, detect, contain, and correct security violations, and reasonably preserve and protect the confidentiality, integrity

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<sup>5</sup> Protected Health Information: 45 CFR §160.103

<sup>6</sup> 45 CFR §164.402.

<sup>7</sup> 45 CFR §164.306(a)

and availability of EPHI, and enforce those policies and procedures, including sanctions for anyone not found in compliance;

- (ii) Physical Safeguards. BUSINESS ASSOCIATE shall implement appropriate physical safeguards to protect PHI, including, but not limited to, facility access, facility security, workstation use, workstation security, device and media controls, and disposal;<sup>8</sup>
  - (iii) Technical Safeguards. BUSINESS ASSOCIATE shall implement appropriate technical safeguards to protect PHI, including, but not limited to, access controls, authentication, and transmission security;<sup>9</sup> and
  - (iv) Security Awareness and Training. BUSINESS ASSOCIATE shall provide training to relevant workforce members, including management, on how to prevent the improper access, use, or disclosure of PHI; and update and repeat training on a regular basis.<sup>10</sup>
- c. In accordance with 45 CFR §164.316, document the required policies and procedures and keep them current, and cooperate in good faith in response to any reasonable requests from STATE to discuss, review, inspect, and/or audit BUSINESS ASSOCIATE's safeguards. BUSINESS ASSOCIATE shall retain the documentation required for six (6) years from the date of its creation or the date when it last was in effect, whichever is later.<sup>11</sup>
  - d. Comply with the provisions found in 45 CFR §164.308 (a)(1) (ii)(A) and (B), requiring BUSINESS ASSOCIATE to conduct an accurate and thorough *risk analysis*, and to periodically update the risk analysis (no less than once every 3 years); and to implement *risk management* measures to reduce the risk and vulnerabilities to a reasonable and appropriate level to comply with 45 CFR §164.306(a).
  - e. As applicable only to the PHI BUSINESS ASSOCIATE receives from STATE, BUSINESS ASSOCIATE shall ensure that any subcontractor of BUSINESS ASSOCIATE that creates, receives, maintains, or transmits PHI on behalf of BUSINESS ASSOCIATE agrees in writing to the same restrictions, conditions, and requirements that apply to BUSINESS ASSOCIATE through this Agreement with respect to such PHI.<sup>12</sup>
  - f. Notify the STATE following discovery of any use or disclosure of PHI not permitted by this Agreement of which it becomes aware, or any Breach of Unsecured PHI.<sup>13</sup>

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<sup>8</sup> 45 CFR §164.310

<sup>9</sup> 45 CFR §§ 164.310, 164.312

<sup>10</sup> 45 CFR §164.308(a)(5)

<sup>11</sup> 45 CFR §§164.306 – 164.316; 164.504(e)(2)(ii)(B)

<sup>12</sup> 45 CFR §§164.308(b), 164.314(a)(2), 164.502(e), 164.504(e)(2)(ii)(D)

<sup>13</sup> 45 CFR §§164.314(a)(2), 164.410(a), 164.504(e)(2)(ii)(C)

- (i) BUSINESS ASSOCIATE shall immediately notify the STATE's HIPAA Privacy or Security Officer verbally.
  - (ii) BUSINESS ASSOCIATE shall subsequently notify the STATE's HIPAA Privacy or Security Officer in writing, without unreasonable delay, and in no case later than two (2) business days following discovery of the impermissible use or disclosure of PHI, or Breach of Unsecured PHI.
  - (iii) A Breach of Unsecured PHI shall be treated as discovered by the BUSINESS ASSOCIATE as of the first day on which such breach is known to the BUSINESS ASSOCIATE or, by exercising reasonable diligence, would have been known to the BUSINESS ASSOCIATE. BUSINESS ASSOCIATE shall be deemed to have knowledge of a Breach if the Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or other agent of the BUSINESS ASSOCIATE.<sup>14</sup>
- g. Take prompt corrective action to mitigate, to the extent practicable, any harmful effect that is known to BUSINESS ASSOCIATE of a Security Incident or a misuse or unauthorized disclosure of PHI by BUSINESS ASSOCIATE in violation of this Agreement, and any other action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. BUSINESS ASSOCIATE shall reasonably cooperate with the STATE's efforts to seek appropriate injunctive relief or otherwise prevent or curtail potential or actual Breaches, or to recover its PHI, including complying with a reasonable corrective action plan.<sup>15</sup>
- h. Investigate such Breach and provide a written report of the investigation and resultant mitigation to STATE's HIPAA Privacy and/or Security Officer within thirty (30) calendar days of the discovery of the Breach.
- i. Provide the following information with respect to a Breach of Unsecured PHI, to the extent possible, as the information becomes available, to the STATE's HIPAA Privacy or Security Officer:
- (i) The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by BUSINESS ASSOCIATE to have been accessed, acquired, used, or disclosed during the breach; and
  - (ii) Any other available information that the STATE is required to include in notification to the Individual under the HIPAA Rules, including, but not limited to the following:<sup>16</sup>

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<sup>14</sup> 45 CFR §164.410(a)(2)

<sup>15</sup> 45 CFR §§164.308(a)(6)(ii); 164.530(f)

<sup>16</sup> 45 CFR §§164.404(c)(1), 164.408, 164.410(c)(1) and (2)

- A. Contact information for Individuals who were or who may have been impacted by the HIPAA Breach (e.g., first and last name, mailing address, street address, phone number, and email address);
  - B. A brief description of the circumstances of the Breach, including the date of the Breach and date of discovery, if known;
  - C. A description of the types of Unsecured PHI involved in the Breach (such as whether the full name, social security number, date of birth, address, account number, diagnosis, disability and/or billing codes, or similar information was involved);
  - D. A brief description of what the BUSINESS ASSOCIATE has done or is doing to investigate the Breach, mitigate harm to the Individual(s) impacted by the Breach, and protect against future Breaches; and
  - E. Contact information for BUSINESS ASSOCIATE's liaison responsible for investigating the Breach and communicating information relating to the Breach to the STATE.
- j. Promptly report to STATE's HIPAA Privacy and/or Security Officer any Security Incident of which BUSINESS ASSOCIATE becomes aware with respect to EPHI that is in the custody of BUSINESS ASSOCIATE, including breaches of Unsecured PHI as required by 45 CFR §164.410, by contacting the STATE's HIPAA Privacy and/or Security Officer.<sup>17</sup>
  - k. Implement reasonable and appropriate measures, including training, to ensure compliance with the requirements of this Agreement by Workforce members who assist in the performance of functions or activities on behalf of the STATE under this Agreement and use or disclose PHI, and discipline such Workforce members who intentionally violate any provisions of these special conditions, which may include termination of employment.<sup>18</sup>
  - l. Make its internal policies, procedures, books, and records relating to the use and disclosure of PHI received from or created or received by BUSINESS ASSOCIATE on behalf of the STATE available to the Secretary of Health and Human Services or to STATE if necessary or required to assess BUSINESS ASSOCIATE's or the STATE's compliance with the HIPAA Rules. BUSINESS ASSOCIATE shall promptly notify STATE of communications with the U.S. Department of Health and Human Services (HHS) regarding PHI provided by or created by STATE and shall provide STATE with copies of any information BUSINESS ASSOCIATE has made available to HHS under this paragraph.<sup>19</sup>

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<sup>17</sup> 45 CFR §§164.314(a)(2), 164.410

<sup>18</sup> 45 CFR §§164.308(a), 164.530(b) and (e)

<sup>19</sup> 45 CFR §164.504(e)(2)(ii)(I)

- m. Upon notice from STATE, accommodate any restriction to the use or disclosure of PHI and any request for confidential communications to which STATE has agreed in accordance with the Privacy Rule.<sup>20</sup>
- n. Make available PHI held by BUSINESS ASSOCIATE, which the STATE has determined to be part of its Designated Record Set, to the STATE as necessary to satisfy the STATE's obligations to provide an Individual with access to their PHI under 45 CFR §164.524, in the time and manner designated by the STATE.<sup>21</sup>
- o. Make available PHI held by BUSINESS ASSOCIATE, which the STATE has determined to be part of its Designated Record Set, for amendment, and incorporate any amendments to PHI that the STATE directs or agrees to in accordance with 45 CFR §164.526, upon request of the STATE or an Individual, subject to State law and BUSINESS ASSOCIATE policies regarding amending vital records.
- p. Document disclosures of PHI made by BUSINESS ASSOCIATE, which are required to be accounted for under 45 CFR §164.528(a)(1), and make this information available as necessary to satisfy the STATE's obligation to provide an accounting of disclosures to an Individual within two (2) business days notice by the STATE of a request by an Individual of a request for an accounting of disclosures of PHI. If an Individual directly requests an accounting of disclosures of PHI from BUSINESS ASSOCIATE, BUSINESS ASSOCIATE shall notify STATE's HIPAA Privacy and/or Security Officer of the request within two (2) business days, and STATE shall either direct BUSINESS ASSOCIATE to provide the information directly to the Individual, or it shall direct that the information required for the accounting be forwarded to STATE for compilation and distribution to the Individual.<sup>22</sup>
- q. Comply with any other requirements of the HIPAA Rules not expressly specified in this Agreement, as and to the extent that such requirements apply to Business Associates under the HIPAA Rules.

### **3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.**

BUSINESS ASSOCIATE may, except as otherwise limited in this Agreement:

- a. General Use and Disclosure: Create, receive, maintain or transmit PHI only for the purposes listed in the CONTRACT and this Agreement, provided that the use or disclosure would not violate the HIPAA Rules if done by the STATE or violate the Minimum Necessary requirements applicable to the STATE.<sup>23</sup>
- b. Limited Use of PHI for BUSINESS ASSOCIATE's Benefit. Use PHI received by the BUSINESS ASSOCIATE in its capacity as the STATE's BUSINESS ASSOCIATE, if

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<sup>20</sup> 45 CFR §164.522

<sup>21</sup> 45 CFR §§164.504(e)(2)(ii)(E), 164.524

<sup>22</sup> 45 CFR §§164.504(e)(2)(ii)(G) and (H), 164.528; HAR ch. 2-71, subch. 2.

<sup>23</sup> 45 CFR §§164.502(a) and (b), 164.504(e)(2)(i)



necessary, for the proper management and administration of the BUSINESS ASSOCIATE or to carry out the legal responsibilities of the BUSINESS ASSOCIATE. BUSINESS ASSOCIATE's proper management and administration does not include the use or disclosure of PHI by BUSINESS ASSOCIATE for Marketing purposes or for sale of PHI.<sup>24</sup>

- c. Limited Disclosure of PHI for BUSINESS ASSOCIATE's Benefit. Disclose PHI for BUSINESS ASSOCIATE's proper management and administration or to carry out its legal responsibilities only if the disclosure is Required by Law, or BUSINESS ASSOCIATE obtains reasonable assurances from the person to whom PHI is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies BUSINESS ASSOCIATE of any instances of which it is aware in which the confidentiality of PHI has been breached.<sup>25</sup>
- d. Minimum Necessary. BUSINESS ASSOCIATE shall only request, use, and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use, or disclosure.<sup>26</sup>
- e. Data Aggregation. Use PHI to provide Data Aggregation services relating to the STATE's Health Care Operations as permitted by 45 CFR §164.504(e)(2)(i)(B).
- f. Disclosures by Whistleblowers: Disclose PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1).

#### **4. STATE'S OBLIGATIONS.**

- a. STATE shall not request BUSINESS ASSOCIATE to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by STATE.
- b. STATE shall not provide BUSINESS ASSOCIATE with more PHI than is minimally necessary for BUSINESS ASSOCIATE to provide the services under the CONTRACT and STATE shall provide any PHI needed by BUSINESS ASSOCIATE to perform under the CONTRACT only in accordance with the HIPAA Rules.

#### **5. TERM AND TERMINATION.**

- a. This Agreement shall be effective as of the date of the CONTRACT or CONTRACT amendment to which this Agreement is attached, and shall terminate on the date the STATE terminates this Agreement or when all PHI is destroyed or returned to STATE.
- b. In addition to any other remedies provided for by this Agreement or the CONTRACT, upon the STATE's knowledge of a material Breach by BUSINESS ASSOCIATE of this

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<sup>24</sup> 45 CFR §§164.502(a)(5)(ii), 164.504(e)(2)(i)(A), 164.504(e)(4)(i), 164.508(a)(3) and (a)(4)

<sup>25</sup> 45 CFR §164.504(e)(4)(ii)

<sup>26</sup> 45 CFR §164.502(b)

Agreement, the BUSINESS ASSOCIATE authorizes the STATE to do any one or more of the following, upon written notice to BUSINESS ASSOCIATE describing the violation and the action it intends to take:

- (i) Exercise any of its rights to reports, access and inspection under this Agreement or the CONTRACT;
- (ii) Require BUSINESS ASSOCIATE to submit a plan of monitoring and reporting, as STATE may determine necessary to maintain compliance with this Agreement;
- (iii) Provide BUSINESS ASSOCIATE with a reasonable period of time to cure the Breach, given the nature and impact of the Breach; or
- (iv) Immediately terminate this Agreement if BUSINESS ASSOCIATE has breached a material term of this Agreement and sufficient mitigation is not possible.<sup>27</sup>

c. Effect of Termination.<sup>28</sup>

- (i) Upon any termination of this Agreement, until notified otherwise by the STATE, BUSINESS ASSOCIATE shall extend all protections, limitations, requirements and other provisions of this Agreement to all PHI received from or on behalf of STATE or created or received by BUSINESS ASSOCIATE on behalf of the STATE, and all EPHI created, received, maintained or transmitted by BUSINESS ASSOCIATE on behalf of the STATE.
- (ii) Except as otherwise provided in subsection 5(c)(iii) below, upon termination of this Agreement for any reason, BUSINESS ASSOCIATE shall, at the STATE's option, return or destroy all PHI received from the STATE, or created or received by the BUSINESS ASSOCIATE on behalf of the STATE, that the BUSINESS ASSOCIATE still maintains in any form, and BUSINESS ASSOCIATE shall retain no copies of the information. This provision shall also apply to PHI that is in the possession of subcontractors or agents of BUSINESS ASSOCIATE. BUSINESS ASSOCIATE shall notify the STATE in writing of any and all conditions that make return or destruction of such information not feasible and shall provide STATE with any requested information related to the STATE's determination as to whether the return or destruction of such information is feasible.
- (iii) If the STATE determines that returning or destroying any or all PHI is not feasible or opts not to require the return or destruction of such information, the protections of this Agreement shall continue to apply to such PHI, and BUSINESS ASSOCIATE shall limit further uses and disclosures of PHI to those purposes that make the return or destruction infeasible, for so long as BUSINESS ASSOCIATE maintains such PHI. STATE hereby acknowledges and agrees that

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<sup>27</sup> 45 CFR §164.504(e)(2)(iii)

<sup>28</sup> 45 CFR §164.504(e)(2)(ii)(J)

infeasibility includes BUSINESS ASSOCIATE's need to retain PHI for purposes of complying with its work product documentation standards.

## **6. MISCELLANEOUS.**

- a. Amendment. BUSINESS ASSOCIATE and the STATE agree to take such action as is necessary to amend this Agreement from time to time for compliance with the requirements of the HIPAA Rules and any other applicable law.
- b. Interpretation. In the event that any terms of this Agreement are inconsistent with the terms of the CONTRACT, then the terms of this Agreement shall control. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Rules, as amended, the HIPAA Rules shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this Agreement shall control. Any ambiguity in this Agreement shall be resolved to permit STATE to comply with the HIPAA Rules. Notwithstanding the foregoing, nothing in this Agreement shall be interpreted to supersede any federal or State law or regulation related to confidentiality of health information or vital record information that is more stringent than the HIPAA Rules.
- c. Indemnification. BUSINESS ASSOCIATE shall defend, indemnify, and hold harmless the STATE and STATE's officers, employees, agents, contractors and subcontractors to the extent required under the Contract for incidents that are caused by or arise out of a Breach or failure to comply with any provision of this Agreement or the HIPAA Rules by BSUSINESS Associates or any of BUSINESS ASSOCIATE's officers, employees, agents, contractors or subcontractors.
- d. Costs Related to Breach. BUSINESS ASSOCIATE shall be responsible for any and all costs incurred by the STATE as a result of any Breach of PHI by BUSINESS ASSOCIATE, its officers, directors, employees, contractors, or agents, or by a third party to which the BUSINESS ASSOCIATE disclosed PHI under this Agreement, including but not limited to notification of individuals or their representatives of a Breach of Unsecured PHI,<sup>29</sup> and the cost of mitigating any harmful effect of the Breach.<sup>30</sup>
- e. Response to Subpoenas. In the event BUSINESS ASSOCIATE receives a subpoena or similar notice or request from any judicial, administrative, or other party which would require the production of PHI received from, or created for, the STATE, BUSINESS ASSOCIATE shall promptly forward a copy of such subpoena, notice or request to the STATE to afford the STATE the opportunity to timely respond to the demand for its PHI as the STATE determines appropriate according to its State and federal obligations.

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<sup>29</sup> 45 CFR Part 164, Subpart D

<sup>30</sup> 45 CFR §164.530(f)

- f. Survival. The respective rights and obligations of STATE and BUSINESS ASSOCIATE under sections 5.c., Effect of Termination, 6.c., Indemnification, and 6.d., Costs Related to Breach, shall survive the termination of this Agreement.
- g. Notices: Whenever written notice is required by one party to the other under this Agreement, it should be mailed, faxed, or e-mailed to the appropriate address noted below. If notice is sent by e-mail, then a confirming written notice should be sent by mail or fax within two (2) business days after the date of the e-mail. The sender of any written notice required under this Agreement is responsible for confirming receipt by the recipient.

**STATE:**

DHS Information Security / HIPAA  
Compliance Manager  
P.O. Box 700190  
Kapolei, Hawaii 96709-0190  
Fax: (808) 692-8173  
Email: LYong@dhs.hawaii.gov

**BUSINESS ASSOCIATE:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: (\_\_\_\_) \_\_\_\_\_  
Email: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date and year first written above.

**BUSINESS ASSOCIATE**

Dated: \_\_\_\_\_ By \_\_\_\_\_

Representative

**DEPARTMENT OF HUMAN SERVICES, STATE OF HAWAII**

Dated: \_\_\_\_\_ By \_\_\_\_\_

Director

By signing below, the Offeror confirms that those pages that are indicated in the table and marked throughout the response should be considered as "Confidential" or "Proprietary". For all areas that are listed, the Offeror must provide an explanation to MQD of how substantial competitive harm would occur if the information is released. Please list these "Confidential" or "Proprietary" areas and provide explanations below.

Title

[illegible]

## **APPENDIX G - BUSINESS PROPOSAL**

### **BUSINESS PROPOSAL**

I, \_\_\_\_\_ (Name of Official  
authorized to commit, copy attached) hereby enter the official proposal  
prices indicated below on behalf \_\_\_\_\_  
(Name of Firm entering proposal), and warrant that all terms and conditions  
of the RFP-MQD-2020-005 for Provider Enrollment and Revalidation for  
Med-QUEST Division (MQD) providers are met.

Cost of Contract SFY2019:

January 1, 2020 to December 31, 2020

(To be Divided into Twelve Equal Payments to Billed Monthly)

Total Cost of Proposal: \_\_\_\_\_

## APPENDIX H - OFFEROR REFERENCES

The Offeror is required to supply MQD with names, addresses, and telephone numbers of three (3) customers for which the Offeror has supplied products and services that are similar to those being requested in this RFP. All work for these references must have been performed within the past five (5) years. Only three (3) references should be submitted.

Client Name: \_\_\_\_\_

Client Address: \_\_\_\_\_

Reference Name and Title: \_\_\_\_\_

Current Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Description of Services Provided: \_\_\_\_\_

\_\_\_\_\_

Client Name: \_\_\_\_\_

Client Address: \_\_\_\_\_

Reference Name and Title: \_\_\_\_\_

Current Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Description of Services Provided: \_\_\_\_\_

\_\_\_\_\_

Client Name: \_\_\_\_\_

Client Address: \_\_\_\_\_

Reference Name and Title: \_\_\_\_\_

Current Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Description of Services Provided: \_\_\_\_\_

\_\_\_\_\_