



**HENNEPIN HEALTHCARE
GENERAL TERMS AND CONDITIONS FOR
INFRASTRUCTURE AND CONSTRUCTION SERVICES**

The provisions of these General Terms and Conditions form the basis of an awarded contract unless they are specifically modified, in writing. This document and its terms and conditions will take precedent over competing terms and conditions.

AGREEMENT

1. SERVICES TO BE PROVIDED

CONTRACTOR agrees to provide services to HHS including necessary labor, materials, equipment and supervision on an “as needed” basis as described applicable quotes, architectural drawings, construction bid documents, and/or statements of work. Authorized representatives of HHS may also request “as needed” services of CONTRACTOR and CONTRACTOR will submit a statement of work for each requested project, including cost, scope, and an anticipated starting work date. As needed proposals must be approved in writing by an authorized representative prior to commencing work at HHS. This Agreement and its terms and conditions will take precedent over competing terms and conditions.

2. TERM AND COST OF THE AGREEMENT

- A. This or any agreement incorporating these terms shall commence in accordance with agreed upon start dates but may be terminated in accordance with the Default and Cancellation provisions of this Agreement.
- B. CONTRACTOR shall be paid according to approved successful bid, Statement(s) of Work or Proposals which shall be incorporated into this Agreement along with the general terms and conditions of HHS’s purchase order(s) unless otherwise agreed in writing.
- C. Payment for services shall be made directly to CONTRACTOR after completion of the services and submission of an invoice. CONTRACTOR shall submit invoices for services according to the agreed to payment schedule in bid, proposal or statement of work. CONTRACTOR’s out-of-pocket expenses shall be reimbursed by HHS only if approved, only to the extent that it conforms to HHS’s policy on reimbursable expenses.
- D. All of CONTRACTOR’s invoices must contain the correct purchase order number. Invoices not containing the correct purchase order number may be rejected. CONTRACTOR must submit invoices via Email to: facilities@hcmcd.org

3. CONTRACT ADMINISTRATION

To coordinate the services of CONTRACTOR with the activities of HHS so as to accomplish the purposes of this Agreement, HHS's Contract Liaison or designee, shall manage this Agreement on behalf of HHS and serve as liaison between HHS and CONTRACTOR.

HHS Contract Liaison:

Wanda Weber, Senior Facilities Manager
Facilities Management
Hennepin Healthcare
701 Park Ave. Mail Code: P2
Minneapolis, MN 55415
Office: 612-873-6401
Email: Wanda.Weber@hcmcd.org

CONTRACTOR Contract Liaison:

[Vendor contact name & title
Vendor's Company Name
Vendor's Company Address
City, State xxxxx
Direct: xxx-xxx-xxxx
Email: Vendor's Email Address]

4. BUSINESS REVIEWS AND REPORTING

A. CONTRACTOR and HHS may convene and conduct business review meetings. Agenda items may include performance metrics or reports, volumes of services utilized, total spend, roadmaps for future planning, opportunities to optimize services, etc. CONTRACTOR and HHS will set the agenda prior to each meeting.

5. PREVAILING WAGES

The term "prevailing wage rate" shall mean the hourly rate paid to the employee plus the contribution for economic benefits paid to the largest number of workers engaged in the same class of labor within Hennepin County or other locality from which labor is normally secured for the type of services to be performed under these Special Terms and Conditions. All contractors and subcontractors engaged in work under this Agreement shall pay not less than the prevailing wage rates for those classifications established by the Minnesota Department of Labor and Industry (DOLI). Whenever the prevailing wage rate is revised by the DOLI, that new rate shall become the new minimum hourly rate. Published prevailing wage list may be obtained by the calling DOLI at 651-296-6452 or by visiting their web site at:

http://workplace.doli.state.mn.us/prevwage/commercial_data.php?county=27

6. PERSONNEL AND OTHER PERSONS ACCESSING HHS FACILITIES

- A. CONTRACTOR shall comply with all applicable federal, state and local statutes, regulations, rules and ordinances in connection with this Agreement. CONTRACTOR must adhere to HHS policies and procedures, including security, access to systems, parking, on-boarding, background checks, annual required training and regulatory requirements in a hospital environment.
- B. CONTRACTOR is required to properly uniform its service personnel and they shall present a clean and neat appearance at all times. CONTRACTOR shall have all service personnel supplied with badges that shall include, as a minimum, a color photo, employee name, the service employee is providing (i.e. construction/building remodeling) and firm name. All employees are required to wear a photo ID badge at all times on the job. Badges must be openly displayed on the clothing so that it is readily seen when entering or leaving the building. The company name shall be visible on the uniform.
- C. CONTRACTOR shall not assign to a HHS facility any person, whether on a temporary or permanent basis, who has a criminal conviction which directly relates to his/her position of employment (assignment) such as theft, any sex offense, assault, possession of stolen property, robbery or any other crime relating to the honesty or conduct of the worker. The costs of complying with all criminal background check requirements shall be borne exclusively by CONTRACTOR.
- D. CONTRACTOR's decisions regarding the assignment of CONTRACTOR's employees to perform contract requirements in HHS facilities shall be based on careful consideration of the contract work; reasonable security of the premises, its occupants and contents; performance standards and responsibilities required of CONTRACTOR by the contract.
- E. CONTRACTOR shall not employ individuals in and about the premises who may use improper language or act in a loud, boisterous or otherwise improper manner.
- F. CONTRACTOR will not tolerate harassment or offensive conduct by an employee against other employees or against any of HHS's employees, invitees, the public or any other person upon HHS premises. Such activities include, but are not limited to, unwelcome or offensive language, gestures or bodily contact. All persons employed by CONTRACTOR shall adhere to Data Privacy as set forth in the Section on Data Privacy in the Agreement. All CONTRACTOR's personnel must be able to understand and communicate effectively in English. Personnel deemed unacceptable by HHS shall be replaced within twenty-four (24) hours.
- G. The following IS NOT ALLOWED:
 - 1. Allowing unauthorized persons (including family and friends) to enter the building or work area. Visitors must stay in the lobby until the employee arrives.

2. Opening or going through any part of HHS's desk drawers, cabinets, etc., use of HHS's calculator's, computers, radios, telephones, fax machines or other office equipment or property.
3. Theft or aiding in the theft of any HHS property.
4. Sleeping on the job.
5. Taking any scrap material from the premises
6. Smoking anywhere in a HHS facility or Sidewalks
7. Use of any HHS tools, equipment, or supplies without prior authorization.
8. CONTRACTOR employees, even if legally permitted to carry pistols or other dangerous weapons, may not possess firearms or any other weapon while working at any HHS facility.

7. CLAIMS FOR DAMAGES

All claims shall be specific and be made in writing within twenty (20) days of occurrence. CONTRACTOR shall take necessary precautions to protect persons, property, and equipment from injury and damages. CONTRACTOR shall repair or replace items, furnishings, or building surfaces damaged as a result of CONTRACTOR's work activity. Repairs and replacements shall be to HHS's satisfaction; CONTRACTOR shall assume all repair and replacement costs.

8. KEY CONTROL

Key control shall be the responsibility of CONTRACTOR. The HHS facility representative will issue keys or access cards on an as-needed basis. If facility keys are taken off the property by any of CONTRACTOR's personnel, they will be required to return them immediately. Any key that is lost, stolen or broken shall be reported immediately to the facility representative. **In the event CONTRACTOR, for any reason, does not return a key or access card, it shall be at the expense of CONTRACTOR to restore and/or maintain security of the facility as deemed necessary by HHS.**

9. SUBCONTRACTING

No subcontracting of primary work will be allowed. Any subcontracting of secondary work **must** be approved by HHS. CONTRACTOR shall indicate any mark-up costs for subcontracting services on the proposal sheet. All subcontractors shall be subject to the same security background checks as required of the main contractor.

10. TRAVEL TIME/PARKING COSTS/TRUCK CHARGES/TRIP CHARGES/DELIVERY CHARGES

Travel time, parking costs, truck charges, trip charges and delivery charges will be considered an expense cost of CONTRACTOR and will not be reimbursed by HHS. Building Managers can authorize parking in the facility loading dock or parking lot, if space is available.

11. TOOLS AND EQUIPMENT

- A. CONTRACTOR is to provide, at no additional cost to HHS, the required hand tools and equipment typically used by the assigned trade person.
- B. All equipment and its operation shall be in good mechanical condition at all times. Any equipment deemed unsafe by HHS shall be replaced immediately at no additional cost to HHS.
- C. CONTRACTOR shall immediately notify HHS in writing of all recalled products provided to HHS under this Agreement. CONTRACTOR shall also immediately notify HHS in writing of all Safety Alert Warnings and Hazard Reports for all products provided to HHS under this Agreement.

12. ASBESTOS

- A. The HHS Asbestos and O & M Coordinator may require general contractors to submit the following information with any proposal for work that may involve asbestos:
 - 1. A training acknowledgement indicating CONTRACTOR's employees have seen the building survey and have been notified about ACM in the building.
 - 2. A copy of CONTRACTOR's respiratory protection program.
 - 3. A description of CONTRACTOR's medical surveillance program.
 - 4. Documentation that CONTRACTOR's employees have received at least sixteen (16) hours or two (2) days of training in asbestos control.
 - 5. A detailed description of the work practices which avoid or minimize disturbing asbestos.
 - 6. A list of personal protective equipment and clothing used by CONTRACTOR's employees for this project.
 - 7. Removal of any hazardous material, generated by CONTRACTOR, shall be their responsibility if it was a result of their work activity and/or process.

13. EMERGENCY SERVICE [If Necessary]

CONTRACTOR shall provide emergency service that shall be available seven (7) days per week, twenty-four (24) hours per day. **CONTRACTOR shall respond to a request for emergency service by being on-site, at the designated facility within two (2) hours of notification during normal working hours; response at any other time shall not exceed four (4) hours.** CONTRACTOR shall provide HHS, with twenty-four (24) hours per day, seven (7) days per week emergency telephone number. Recorders, pagers, or answering machines will not be acceptable.

14. FEES AND PERMITS

CONTRACTOR shall secure all permits and licenses, both temporary and permanent, required by local and state laws and ordinances. All fees and expenses required for such permits and licenses shall be paid by CONTRACTOR and will be reimbursed by HHS.

15. OSHA

CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions required in connection with their work, including regulation of the Occupational Safety and Health Administration (OSHA) and other governing agencies. HHS reserves the right to oversee all service work from a safety standpoint and require CONTRACTOR to take appropriate action to ensure safety and code compliance.

16. SERVICE RESPONSIBILITIES

- A. Authorized representatives of HHS may request services, **including emergency service**, of CONTRACTOR. All work must be approved by an authorized HHS facilities representative and meet all local and national building codes and standards.
- B. Each Change Order submitted by CONTRACTOR shall (i) be in writing; (ii) state whether the pricing for the Change Order is lump sum, cost plus, unit price, etc.; (iii) state if the work is to be provided by CONTRACTOR or a subcontractor; and (iv) if the work is to be provided by a subcontractor, clearly state the associated fees and costs. HHS reserves the right to approve or deny any Change Order, and to review all actual costs incurred. CONTRACTOR agree to cooperate with the signing of Change Order and coordinate with the project architect, where applicable.
- C. On time and materials agreements, the majority of the work requested under this Agreement will be performed by one (1) trade person. Unless otherwise specifically requested by the HHS designated representative, the CONTRACTOR shall furnish only one (1) trade person per job. On jobs requiring more than three (3) trade persons, the CONTRACTOR shall be required to designate one (1) employee to perform the duties and responsibilities of Foreman and that person shall receive compensation as such. Adequate field services staff must be available to ensure full service at all times.
- D. Apprentices: If CONTRACTOR intends to utilize apprentices in the performance of this Agreement, they shall submit, the various classification schedule and/or pay rates breakdowns for each apprentice level. This information shall be updated at each requested contract price adjustment.
- E. CONTRACTOR'S service personnel shall notify HHS Facilities representative of their arrival at the job site. CONTRACTOR'S employees are required to sign in and out of the facility each time service is required. A copy of the service activity report (job ticket) shall be left with or for the Facilities representative upon completion of each service call (whether scheduled or unscheduled).
- F. The CONTRACTOR shall not assign to a HHS facility any person, whether on a temporary or permanent basis, who has a criminal conviction which directly relates to his/her position of employment (assignment) such as theft, any sex offense, assault, possession of stolen property, robbery or any other crime relating to the honesty or conduct of the worker

G. CONTRACTOR'S service personnel shall notify Security Operations (SOC) at 612-873-4116 before beginning work which may interface with any facility alarm system that reports to SOC, and shall inform SOC when they are finished for the day.

17. REPAIRS TO FIRE PROTECTION SYSTEMS

If CONTRACTOR performs construction, renovation or maintenance activities that cause holes in fire protection systems, such as fire rated walls, CONTRACTOR performing the work shall make all necessary repairs to return the wall to its original fire rating. HHS will arrange to have CONTRACTOR's work inspected. Departments that are authorized to inspect for proper fire stopping are Facilities, Information Technology, Bioelectronics, and Telephony. In order to be paid, CONTRACTOR must submit the Firewall Penetration Inspection Sheet, provided by HHS and signed by a representative of the HHS department that inspected the work, with the invoice.

18. WARRANTY

The Contractor warrants that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements, including substitutions not properly approved and authorized may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by CONTRACTOR, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Manufacturers' product warranties shall not relieve CONTRACTOR of general warranty obligations.

19. RECYCLED MATERIALS

To ensure, wherever practical and appropriate, that materials with recycled content are given reasonable consideration for incorporation in construction of Hennepin County facilities. Specifications shall allow use of materials and products with recycled content wherever practical and appropriate except when an architect, HHS, or agent of HHS determines that either the performance requirements for the product will be compromised by the use of recycled materials, or when a product with recycled content is impractical or will otherwise negatively affect health, safety, or operational efficiency.

20. INDEPENDENT CONTRACTOR

CONTRACTOR shall select the means, method, and manner of performing the services. Nothing is intended or should be construed as creating or establishing the relationship of co-partners between the parties or as constituting CONTRACTOR as the agent, representative, or employee of HHS for any purpose. CONTRACTOR is and shall remain an independent contractor for all services performed under this Agreement.

CONTRACTOR shall secure at its own expense all personnel required in performing services under this Agreement. Any personnel of CONTRACTOR or other persons while engaged in the performance of any work or services required by CONTRACTOR will have no contractual relationship with HHS and will not be considered employees of HHS. HHS shall not be responsible for any claims that arise out of employment or alleged employment under the Minnesota Economic Security Law or the Workers' Compensation Act of the State of Minnesota on behalf of any personnel, including, without limitation, claims of discrimination against CONTRACTOR, its officers, agents, contractors, or employees. CONTRACTOR shall defend, indemnify, and hold harmless HHS, its officials, officers, agents, volunteers, and employees from all such claims irrespective of any determination of any pertinent tribunal, agency, board, commission, or court. Such personnel or other persons shall neither require nor be entitled to any compensation, rights, or benefits of any kind from HHS, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Re-employment Compensation, disability, severance pay, and retirement benefits.

21. NON-DISCRIMINATION

In accordance with HHS's policies against discrimination, CONTRACTOR agrees that it shall not exclude any person from full employment rights or participation in, or the benefits of, any program, service or activity on the grounds of race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public assistance status, or national origin; and no person who is protected by applicable Federal or State laws against discrimination shall be otherwise subjected to discrimination.

22. AFFIRMATIVE ACTION

A. Requirements. In accordance with Hennepin County Board Resolution and subject to the applicable exemptions, if any, in Par. B below, if this Agreement is for a sum over \$100,000 or is amended to exceed \$100,000, then CONTRACTOR shall abide by COUNTY's Affirmative Action requirements for COUNTY contractors. Those requirements, for purposes of this Agreement, are consistent with those imposed for state contractors pursuant to Minnesota Statutes, sections 363A.36 to .37 and Minnesota Rules, parts 5000.3200 to 5000.3600.

B. Exemptions. CONTRACTOR may be granted an exemption for one of the following reasons:

- (1) Contract is for emergency or life safety-related purchases;
- (2) CONTRACTOR has no facilities and has no more than one employee operating within the geographic boundaries of Hennepin County;
- (3) CONTRACTOR had an average of forty (40) or fewer full-time/benefit-earning employees during the twelve (12) months preceding the submission of the bid, request for proposal or execution of this Agreement; or
- (4) Pursuant to Hennepin County Board policy, the County Administrator or his/her designee granted an exemption.

- C. Compliance; Remedies. CONTRACTOR shall demonstrate compliance by submitting and maintaining a workforce certificate from the Minnesota Department of Human Rights (MDHR), unless COUNTY provides for alternative certification. CONTRACTOR shall remain in compliance with all applicable requirements through the term of this Agreement. CONTRACTOR shall also provide all compliance documentation requested by the MDHR or by COUNTY, and shall cooperate with all compliance activities, including but not limited to site visits. If CONTRACTOR fails to demonstrate good faith efforts to correct any identified Affirmative Action deficiencies or fails to submit requested reports or information required by COUNTY or the MDHR, or has engaged in discriminatory practices, COUNTY may consider this a violation of this Agreement and may exercise any remedies available to it in law or in equity, including, but not limited to, cancellation or termination of this Agreement.

23. INDEMNIFICATION AND INSURANCE

- A. CONTRACTOR agrees to defend, indemnify, and hold harmless HHS, its officials, officers, agents, volunteers and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney’s fees, resulting directly or indirectly from any act or omission of CONTRACTOR, a subcontractor, anyone directly or indirectly employed by them, and/or anyone for whose acts and/or omissions they may be liable in the performance of the services required by this Agreement, and against all loss by reason of the failure of CONTRACTOR to perform any obligation under this Agreement.
- B. In order to protect CONTRACTOR and those listed above under the indemnification provision, CONTRACTOR agrees at all times during the term of this Agreement, and beyond such term when so required, to have and keep in force the following insurance coverages:

	<u>Limits</u>
1. Commercial General Liability on an occurrence basis with contractual liability coverage:	
General Aggregate	\$2,000,000
Products—Completed Operations Aggregate	2,000,000
Personal and Advertising Injury	1,500,000
Each Occurrence—Combined Bodily Injury and Property Damage	1,500,000
2. Workers’ Compensation and Employer’s Liability:	
Workers’ Compensation	Statutory

If CONTRACTOR is based outside the State of Minnesota, coverage must apply to Minnesota law. In accordance with Minnesota law, if CONTRACTOR is a sole proprietor, it is exempted from the above Workers' Compensation requirements. In the event that CONTRACTOR should hire employees or subcontract this work, CONTRACTOR shall obtain the required insurance.

Employer's Liability. Bodily injury by:	
Accident—Each Accident	500,000
Disease—Policy Limit	500,000
Disease—Each Employee	500,000

3.	Professional Liability—Per Claim	1,500,000
	Aggregate	2,000,000

The professional liability insurance must be maintained continuously for a period of two years after the termination of this Agreement.

- C. An umbrella or excess policy over primary liability insurance coverages is an acceptable method to provide the required insurance limits.
- D. The above establishes minimum insurance requirements. It is the sole responsibility of CONTRACTOR to determine the need for and to procure additional insurance which may be needed in connection with this Agreement. CONTRACTOR agrees that CONTRACTOR and/or its insurance policies, not HHS, will be responsible for any claims resulting from work performed by CONTRACTOR under this Agreement. Upon written request, CONTRACTOR shall promptly submit copies of insurance policies to HHS.
- E. CONTRACTOR shall not commence work until it has obtained required insurance and filed with HHS, a properly executed Certificate of Insurance establishing compliance. The certificate(s) must name Hennepin County as the certificate holder and as an additional insured for the liability coverage(s) for all operations covered under the Agreement. The certificate must also show that HHS will receive 30 days prior written notice in the event of cancellation, nonrenewal, or material change in any described policies.
- F. CONTRACTOR shall furnish to HHS updated certificates during the term of this Agreement as insurance policies expire. If CONTRACTOR fails to furnish proof of insurance coverages, HHS may withhold payments and/or pursue any other right or remedy allowed under the contract, law, equity, and/or statute. HHS does not waive any rights or assume any obligations by not strictly enforcing the requirements set forth in this section.

- G. Duty to Notify. CONTRACTOR shall promptly notify HHS of any claim, action, cause of action or litigation brought against CONTRACTOR, its employees, officers, agents or subcontractors, which arises out of the services contained in this Agreement. CONTRACTOR shall also notify HHS whenever CONTRACTOR has a reasonable basis for believing that CONTRACTOR and/or its employees, officers, agents or subcontractors, and/or HHS, might become the subject of a claim, action, cause of action, criminal arrest, criminal charge or litigation arising out of and/or related to the services contained in this Agreement. Failure to provide the notices required by this section is a material violation of the terms and conditions of this Agreement.

24. DATA PRACTICES

CONTRACTOR, its officers, agents, owners, partners, employees, volunteers and subcontractors shall abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (“MGDPA”), the Health Insurance Portability and Accountability Act and implementing regulations, if applicable, and all other applicable state and federal laws, rules, regulations and orders relating to data privacy or confidentiality, and as any of the same may be amended.

25. RECORDS – AVAILABILITY/ACCESS

- A. Subject to the requirements of Minnesota Statutes Section 16C.05 (as may be amended), CONTRACTOR agrees that HHS, Hennepin County, the State Auditor, the Legislative Auditor, or any of their duly authorized representatives, at any time during normal business hours, and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of CONTRACTOR and involve transactions, payments, charges and/or expenses relating to this Agreement. CONTRACTOR must respond in writing within two (2) business days of an audit request stating the materials they will make available for the audit, and CONTRACTOR must make such materials available (in electronic format, if requested) within five (5) business days of an audit request. Additional materials that may be requested during an audit include, but are not limited to, job cost reports, contracts with subcontractors, payments to subcontractors and vendors, Change Orders, payroll costs, insurance charges (including self-insurance), purchase orders and correspondence relating to this Agreement. Such materials shall be maintained and such access shall be in force and effect during the period of the Agreement and for six (6) years after its termination or cancellation.
- B. In accordance with Medicare requirements under Section 952 of the Omnibus Reconciliation Act of 1980 (PL 96-499) as well as such final regulations relating thereto as may be promulgated by the Secretary of the U.S. Department of Health and Human Services (the "Secretary"), and to the extent that such requirements are applicable to this Agreement, CONTRACTOR shall, while this Agreement is effective and until the expiration of four (4) years after furnishing of any services

hereunder, make available, upon written request to the Secretary, or the Comptroller General of the United States (the "Comptroller General"), or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records of CONTRACTOR as are necessary to certify the nature and extent of the costs incurred by CONTRACTOR with respect to the services furnished pursuant to this agreement. If CONTRACTOR carries out any of the duties hereunder through a subcontractor, with a value or cost of \$10,000.00 or more over a twelve (12) month period, such subcontract shall contain a clause identical to the foregoing concerning the maintenance of records and their availability to the Secretary or the Comptroller General. HHS's audit rights and right to make claims for overcharges under this Agreement shall continue after final payment is made. CONTRACTOR agrees that if an audit is performed hereunder by HHS, or any of its duly authorized representatives, and 5.0% or more of overall construction costs are identified as overcharges, then CONTRACTOR shall be liable for such overcharges and for all associated audit fees incurred by HHS.

26. SUCCESSORS, SUBCONTRACTING AND ASSIGNMENTS

- A. CONTRACTOR binds itself, its partners, successors, assigns and legal representatives to HHS in respect to all covenants, agreements and obligations contained in the contract documents. CONTRACTOR shall not assign, subcontract, transfer or pledge this Agreement and/or the services to be performed hereunder, whether in whole or in part, nor assign any monies due or to become due to it hereunder without the prior written consent of HHS.
- B. Permission to subcontract, however, shall under no circumstances relieve CONTRACTOR of its liabilities and obligations under the Agreement. Further, CONTRACTOR shall be fully responsible for the acts, omissions, and failure of its subcontractors in the performance of the herein specified contractual services, and of person(s) directly or indirectly employed by subcontractors. Contracts between CONTRACTOR and each subcontractor shall require that the subcontractor's services be performed in accordance with the terms and conditions herein specified. HHS's audit rights in Section 24 of this Agreement shall extend to each subcontractor used by CONTRACTOR to perform work under this Agreement. Any consent to assign shall be accomplished by execution of a form prepared by HHS and signed by CONTRACTOR, the assignee and HHS.
- C. CONTRACTOR shall notify HHS in writing if another person/entity acquires, directly or indirectly, more than 50 percent of the voting power of the shares entitled to vote for directors of CONTRACTOR. Notice shall be given within ten (10) days of such acquisition and shall specify the name and business address of the acquiring person/entity. HHS reserves the right to require the acquiring person/entity to promptly become a signatory to this Agreement by amendment or other document so as to help assure the full performance of this Agreement.

27. MERGER AND MODIFICATION

- A. It is understood and agreed that the entire Agreement between the parties is contained herein and that this Agreement supersedes all prior agreements and amendments, oral agreements and negotiations between the parties relating to the subject matter hereof. All items referred to in this Agreement are incorporated or attached and are deemed to be part of this Agreement.
- B. Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the parties hereto.

28. DEFAULT AND CANCELLATION

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement or so fails to administer the work as to endanger the performance of the Agreement, this shall constitute a default. Unless CONTRACTOR's default is excused by HHS, HHS may upon written notice immediately cancel this Agreement in its entirety. Additionally, failure to comply with the terms of this Agreement shall be just cause for HHS for delaying payment until CONTRACTOR's compliance. In the event of a decision to withhold payment, HHS shall furnish prior written notice to CONTRACTOR.
- B. Notwithstanding any provision of this Agreement to the contrary, CONTRACTOR shall not be relieved of liability to HHS for damages sustained by HHS by virtue of any breach of this Agreement by CONTRACTOR. Upon notice to CONTRACTOR of the claimed breach and the amount of the claimed damage, HHS may withhold any payments to CONTRACTOR for the purpose of set-off until such time as the exact amount of damages due HHS from CONTRACTOR is determined. Following notice from HHS of the claimed breach and damage, CONTRACTOR and HHS shall attempt to resolve the dispute in good faith.
- C. The above remedies shall be in addition to any other right or remedy available to HHS under this Agreement, law, statute, rule, and/or equity.
- D. HHS's failure to insist upon strict performance of any provision or to exercise any right under this Agreement shall not be deemed a relinquishment or waiver of the same, unless consented to in writing. Such consent shall not constitute a general waiver or relinquishment throughout the entire term of the Agreement.
- E. This Agreement may be canceled with or without cause by either party upon thirty (30) days written notice.
- F. Provisions that by their nature are intended to survive the term, cancellation or termination of this Agreement include but are not limited to: SERVICES TO BE PROVIDED (as to ownership of property); INDEPENDENT CONTRACTOR; INDEMNIFICATION AND INSURANCE; DATA PRACTICES; RECORDS-

AVAILABILITY/ACCESS; DEFAULT AND CANCELLATION;
PROMOTIONAL LITERATURE; and MINNESOTA LAW GOVERNS.

29. COMPLIANCE AND NON-DEBARMENT CERTIFICATION

- A. CONTRACTOR shall comply with all applicable federal, state and local statutes, regulations, rules and ordinances in force or hereafter enacted.
- B. If the source or partial source of funds for payment of services under this Agreement is federal, state or other grant monies, CONTRACTOR shall comply with all applicable conditions of the specific grant, attached hereto and incorporated herein.
- C. CONTRACTOR acknowledges that it is making an ongoing representation and warranty that neither CONTRACTOR nor any of CONTRACTOR is listed by a federal or state agency as excluded, debarred, suspended, or otherwise ineligible to participate in federal or state programs, including, but not limited to Medicare and Medicaid, nor has any current reason to believe that during the term of this Agreement will be so listed, on the U.S. Department of Health and Human Services-Office of Inspector General (OIG) List of Excluded Individuals/Entities (LEIE), the General Services Administration (GSA) System for Award Management (SAM) lists, or the Minnesota Health Care Programs (MHCP) exclusion lists. In the event that CONTRACTOR or any of CONTRACTOR's personnel are included on any excluded party list as described above, CONTRACTOR must immediately provide notice to HHS as described in Section 30 – NOTICES of this Agreement. The parties agree that either party may immediately terminate this Agreement, upon notice to the other, in the event that CONTRACTOR or any of its personnel is listed on the OIG LEIE, GSA SAM, or the MHCP exclusion lists.

30. SUBCONTRACTOR PAYMENT

CONTRACTOR shall pay any subcontractor within ten (10) days of CONTRACTOR's receipt of payment from HHS for undisputed services provided by the subcontractor. CONTRACTOR shall pay interest of 1½ percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, CONTRACTOR shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a prime contractor must be awarded its costs and disbursements, including any attorney's fees, incurred in bringing the action.

31. NOTICES

Any notice or demand which must be given or made by a party hereto under the terms of this Agreement or any statute or ordinance shall be in writing, shall specifically reference "HHS – [Vendor Name] – Contract No. _____," and shall be sent registered or certified mail to the following:

HHS Contact for NOTICES:

SUPPLY CHAIN MANAGER
Hennepin Healthcare
Supply Chain Management, BL.240
701 Park Avenue
Minneapolis, MN 55415

CONTRACTOR Contact for NOTICES:

[Vendor contact name & title
Vendor's Company Name
Vendor's Company Address
City, State xxxxx
Direct: xxx-xxx-xxxx
Fax: xxx-xxx-xxxx
Email: Vendor's Email Address]

32. CONFLICT OF INTEREST

CONTRACTOR affirms that to the best of CONTRACTOR's knowledge, CONTRACTOR's involvement in this Agreement does not result in a conflict of interest with any party or entity which may be affected by the terms of this Agreement. CONTRACTOR agrees that, should any conflict or potential conflict of interest become known to CONTRACTOR, CONTRACTOR will immediately notify HHS of the conflict or potential conflict, specifying the part of this Agreement giving rise to the conflict or potential conflict, and will advise HHS whether CONTRACTOR will or will not resign from the other engagement or representation.

33. PROMOTIONAL LITERATURE

CONTRACTOR agrees that the terms "HHS" or any derivative thereof shall not be utilized in any promotional literature, advertisements of any type or form or client lists without the express prior written consent of HHS.

34. JOINT COMMISSION, CMS, MEDICARE AND OTHER REGULATORY AGENCY REQUIREMENTS

- A. Performance Improvement Program. CONTRACTOR agrees, at HHS's request, to participate in the HHS's Performance Improvement Program, in order to comply with applicable Joint Commission, Medicare and regulatory standards as necessary. These reports shall include performance improvement activities conducted, problems identified, and corrective actions taken as necessary.
- B. Regulatory Approval. CONTRACTOR will reasonably assist HHS in obtaining all necessary regulatory approvals with respect to provision of Acute Services in HHS.

- C. Staff. CONTRACTOR, upon request by HHS, shall provide information and documentation regarding the licensure, certification, and experience of its Staff. If HHS requires CONTRACTOR to supply it with information regarding CONTRACTOR employees, including but not limited to background checks and evaluations, HHS will guarantee the confidentiality of such information in compliance with the Fair Credit Reporting Act Title VII, the Americans with Disabilities Act, and all other applicable state and federal laws, rules, and regulations, including those governing the maintenance and destruction of such information. HHS shall treat these records as though they were the records of their own employees.
- D. Performance Reviews and Licensure. CONTRACTOR will supply HHS with a yearly report of the performance reviews done on the technicians, nurses, and all other persons employed by CONTRACTOR who performed work on behalf of the HHS pursuant to this Agreement during that calendar year. This would include name, date of the review and a final statement of overall competence and performance. Corrective action taken for poor performance is also to be noted.
- E. CONTRACTOR confirms that all services are provided by properly licensed individuals/employees and that all services meet The Joint Commission, CMS, Medicare and other regulatory agency requirements.
- F. CONTRACTOR shall obtain Health Care Construction (“HCC”) certification from the American Society for Healthcare Engineering and shall also obtain status as a Certified Healthcare Constructor (“CHC”) from the American Hospital Association prior to commencing Services at HHS.

35. MINNESOTA LAWS GOVERN

The Laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the herein parties and performance under it. The appropriate venue and jurisdiction for any litigation hereunder will be those courts located within the County of Hennepin, State of Minnesota. Litigation, however, in the federal courts involving the herein parties will be in the appropriate federal court within the State of Minnesota. If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not be affected.

36. COUNTERPARTS AND ELECTRONIC SIGNATURE

Any applicable Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. This Agreement may be executed by a party's signature transmitted by facsimile or electronic portable document format (.pdf), and copies of this Agreement so executed and delivered shall have the same force and effect as originals.