



Terms and Conditions

Compliance with the following terms and conditions are required for any Proposer selected to provide goods, equipment, or services by the awarding of any solicitation.

§ 1: Product/Service Delivery Requirement

Selected Proposer(s) must be able to provide awarded goods, equipment, services, or construction within 30 days of award, or sooner if specifically stated. Proposer's inability to supply awarded goods, equipment, services, or construction by stated time, subjects Proposer to immediate contract cancellation at the option of GHS.

§ 2: Proposal Lock-In

All proposals remain firm for minimum of one year.

§ 3: Correct Billing Format Requirement

When and if awarded, the quoted purchase order number for award of goods, equipment, services, or construction will be stated on all invoices and packing slips. Without such documentation, payment for products/services received cannot be initiated. Original invoice should be one original and one carbon copy. Mail all invoices to:

Attention: Invoice Processing
Grady Memorial Hospital Corporation
Accounts Payable
100 Edgewood Avenue
Atlanta, Georgia 30303

§ 4: Full Right of Rejection

The right to reject any and all proposal submissions, WITH OR WITHOUT CAUSE, is reserved, by GHS. GHS may make no award, selectively award or rescind, with or without cause, any contract resulting from this request. This determination will be made in the best interest of GHS.

§ 5: Substitution Policy

Substitution of awarded products is not permitted without prior written concurrence of the Purchasing Department. If substitution(s) are approved, the Proposer will absorb the difference in cost of any higher cost substitution(s). Substitution(s) at less cost will amount to cost savings to GHS.

§6: Limitation on Quantity of Proposal Submissions

Proposers are RESTRICTED AND PROHIBITED from submitting more than one proposal submission per Proposer or joint venture. Submission of more than one proposal package (i.e., response to a request for quotation) will result in all submissions from that Proposer being disqualified. Alternate cost proposals may be provided for varying product brand names meeting stated specifications IN ONE PROPOSAL SUBMISSION.

§ 7: Review of Proposer's Performance

GHS reserves the right to closely monitor and review Proposer's performance and/or product quality for all contracts/purchase orders resulting from this solicitation, and to take any and all action deemed appropriate by GHS as a result of that review, to include Proposer's notice for required correction or change, or contract cancellation and termination without right of future proposal submission for a minimum period of one year. At minimum, such reviews will be conducted yearly.

§ 8: Non Discrimination Provisions

GHS prohibits discrimination on the basis of race, color, gender, religion, national origin, or disability in connection with employment of any person, or the award of any contract.

GHS will provide equal opportunities without regard to race, color, gender, religion, national origin, or disability, by requiring that any firm doing business with GHS provide equal opportunity to persons and businesses employed by, or contracting with the supplier of products and services to GHS.

§ 9: Term

The Term of this Agreement shall be mutually agreed upon by both parties after the award is made.

§ 10: Payments to Proposer

All invoices upon receipt to GHS and approvals are net sixty (60) days.

§ 11: Payments to Proposer-Availability of Funds

It is understood that GHS shall be bound hereunder only to the extent that funds are available, or may hereafter become available, for the purposes of this contract.

§ 12: Termination

GHS may, terminate Agreement at its convenience, with a thirty (30) days written notice. If GHS terminates for convenience, GHS will reimburse the Proposer for those costs incurred by the Proposer in good faith in connection with the services specified herein. The Proposer will have thirty (30) days from the effective date of termination to submit settlement costs pursuant to this clause.

§ 13: Termination for Default for Nonperformance or Delay - Damages for Delay - Time Extensions

§ 13-1: Default

If the Proposer refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will assure its completion within the time specified in this contract, or any extension thereof, fails to complete said work within such time, or commits any other substantial breach of this contract, and further fails within fourteen (14) days after receipt of written notification from the Chief Purchasing Officer to commence and continue correction of such refusal or failure with diligence and promptness, the Chief Purchasing Officer may, by written notice to the



Proposer, declare the Proposer in breach and terminate the Proposer's right to proceed with the work or such part of the work as to which there has been delay. In such event GHS may take over the work and prosecute the same to completion, by contract or otherwise.

§ 13-2: Time Extension

The Proposer's right to proceed shall not be so terminated nor the Proposer charged with resulting damage if:

- 1) The delay in the completion of the work arises from causes such as: acts of God; acts of the enemy; acts of GHS and any other governmental entity in either a sovereign or contractual capacity; acts of another Proposer in the performance of a contract with GHS; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or
- 2) The Proposer, within ten days from the beginning of any such delay (unless the Chief Purchasing Officer grants a further period of time before the date of final payment under the contract), notifies the Chief Purchasing Officer in writing of the causes of delay. The Chief Purchasing Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in the judgment of the Chief Purchasing Officer, the findings of fact justify such an extension;

§ 13-3: Erroneous Termination for Default

If, after notices of termination of the Proposer's right to proceed under the provisions of this clause, it is determined for any reason that the Proposer was not in default under this provision of the clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause providing for termination for convenience of GHS.

§ 13-4: Additional Rights and Remedies

The rights and remedies of GHS provided in these clauses are in addition to any other rights and remedies provided by law or under this contract.

§ 13-5: Performance Bond

Where applicable, at the request of GHS, Proposer may be required to submit upon notice of award a performance bond equal to no less than five percent (5%) of their proposal as surety for the acceptable completion of this contract per the specifications. GHS will be named as obligee.

§ 13-6: Liquidated Damages

GHS shall be entitled to liquidated damages when the Proposer fails to complete the work or any portion of the work within the time or times fixed in the contract or any extension.

§ 14: Compliance with a Drug Free Workplace Act

To the extent applicable to the work hereunder, Proposer hereby certifies pursuant to the Drug-Free Workplace Act (O.C.G.A. § 50-24-1 through 50-24-6), that:

- 1) A drug-free workplace will be provided for Proposer's employees during the performance of this Agreement; and
- 2) A written certificate shall be secured from each subcontractor hired by Proposer stating that: "As part of the subcontract with Proposer, subcontractor certifies to Proposer that a drug-free workplace will be provided for subcontractor's employees during the performance of this subcontract pursuant to paragraph (7) of subsection (b) of Code Section 50-24-3."

§ 15: Enforcement Costs

If any legal action or other proceeding is brought for the enforcement of this contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this contract, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs, and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs, and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

§ 16: Severability

If any term or provision of this contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected, and every other term and provision of this contract shall be deemed valid and enforceable to the extent permitted by law.

§ 17: Modifications of Services

GHS reserves the right to make changes in the Services including alterations, reductions therein or additions thereto. Upon receipt by the Proposer of GHS's notification of a contemplated change, the Proposer shall (1) if requested by GHS, provide an estimate for the increase or decrease in cost due to the contemplated change, (2) notify GHS of any estimated change in the completion date, and (3) advise GHS in writing if the contemplated change shall effect the



Proposer's ability to meet the completion dates or schedules of this contract.

If GHS so instructs in writing, the Proposer shall suspend work on that portion of the Work affected by a contemplated change, pending GHS decision to proceed with the change. If GHS elects to make the change, GHS shall issue a contract amendment or change order and the Proposer shall not commence work on any such change until such written amendment or change order has been issued and signed by each of the parties.

§ 18: Notices

(1) Any notice or demand under the terms of this agreement must be given or made by the Proposer and GHS in writing and given or made by means of telegram, facsimile transmission, certified or registered mail, express mail or other overnight delivery service, or hand delivery, proper postage or other charges paid and addressed or directed to the respective parties as follows:

If to the Hospital:
Grady Health System
48 Armstrong Street, Suite 411
Atlanta, Georgia 30303
Fax #: (404) 616-1255
Attention: VPMM/CPO

If to the PROPOSER:

(2) GHS will not consider any notice or demand for payment, revised pricing and/or billing unless the request has been made by the Proposer in writing and has been approved by GHS via a written Addendum executed by both parties.

§ 19: Proposer's Obligation

The Proposer warrants by signature on offer page one that neither the firm nor any member of the firm assigned to this assignment is or has been investigated, under investigation, or found guilty of any act by the Office of the Inspector General of the United States.

§ 20: Corporate Compliance

The contracting Party agrees that before the execution of this agreement the participants will provide proof that they are adequately trained in the area of Corporate Compliance and Ethics and that each participant has been cleared by a criminal background check and is not barred or excluded from participating in a federally funded medical program.

§ 21: Personnel

The Proposer represents that it has, or will secure at its own expense all necessary personnel required to perform the services under this contract. Such

personnel shall not be employees of or have any relationship with GHS.

All of the services required under this contract shall be performed by the Proposer or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or licensed or permitted under state and local law to perform such services.

Any changes or substitutions in the Proposer's key personnel must be made known to the GHS representative prior to execution, and written approval granted by GHS before said change or substitution can become effective.

The Proposer warrants that skilled and competent personnel to the highest professional standards in the field shall perform all services.

§ 22: Federal and State Tax

GHS is exempt from federal tax and state tax for tangible personal property. GHS will sign an exemption certificate submitted by the Proposer. The Proposer shall not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations with GHS, nor shall the Proposer be authorized to use GHS's tax exemption number in securing such materials. The Proposer shall be responsible for payment of its own and its share of FICA and Social Security benefits with respect to this contract.

§ 23: Indemnification

The Proposer shall indemnify and hold harmless and defend GHS, its agents, servants, and employees from and against any and all claims, liability, losses, and /or cause of action which may arise from any negligent act or omission of the Proposer, its agents, servants, or employees in the performance of services under this contract.

The Proposer further agrees to indemnify, hold harmless and defend GHS, its agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of any conduct or misconduct of the Proposer not included in the paragraph above and for which the GHS, its agents, servants, or employees are alleged to be liable.

§ 24: Successors and Assigns

GHS and the Proposer each bind itself and its partners, successors, executors, administrations and assigns of such other party, in respect to all covenants of this contract. Except as above, neither GHS nor the Proposer shall assign, sublet, convey, or transfer its interest in this contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of GHS, which may be a party hereto, nor shall it be construed as giving any rights or



benefits hereunder to anyone other than GHS and the Proposer.

§ 25: Remedies

The laws of the State of Georgia shall govern this contract. Any and all legal action necessary to enforce the contract will be held in Fulton County and the contract will be interpreted according to the laws of the State of Georgia. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise.

§ 26: Access and Audits

The Proposer shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the work for at least three (3) years after completion of this contract. GHS shall have access to such books, any records, and terms and conditions contained in this contract may not be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

§ 27: Federal Access

Until the expiration of four (4) years after the furnishing of any service pursuant to this Agreement, Proposer shall make available upon the written request of the Secretary of Health and Human Services or the Comptroller General of the United States, or any of their duly authorized representatives, copies of this Agreement and any books, documents, records and other data that are necessary to certify the nature and extent of costs incurred by Proposer for such services. If Proposer carries out any of its duties under this Agreement through a subcontract with a related organization involving a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period, Proposer shall cause such related organization furnishing of any service pursuant to said contract, to make available upon the written request of the Secretary of Health and Human Services or the Comptroller General of the United States, or any of their duly authorized representatives, copies of records of said related organization that are necessary to certify the nature and extent of cost incurred by Proposer for such service.

§ 28: Insurance

The insurance coverage provided by Proposer, either through an insurance carrier or through self-insurance shall be carried throughout the term of this contract and shall consist of the following:

- 1) Commercial General Liability Insurance: Insuring bodily injury and property damage with limits of not less than \$2 million combined single limit per occurrence/\$6 million in the

aggregate, except limits for products/completed operations shall be \$2 million combined single limit per occurrence/aggregate.

- 2) Worker's Compensation and Employer's Liability Insurance: To comply with the applicable statutes.

The insurance carrier shall be licensed in the State of Georgia. The premium cost of all insurance purchased by the Proposer for protection against risks assumed by virtue of the contract shall be borne by the Proposer and is not reimbursable by GHS.

Proof of said insurance shall be provided to GHS prior to execution of this contract. GHS specifically reserves the right to require the Proposer to provide certified copies of such policy or policies.

§ 29: Confidentiality

Each party shall retain in strict confidence the terms and conditions of this Agreement and all information and data relating to the other party's business, patients, employees, development plans, programs, financial and non-public procurement information, documentation, techniques, trade secrets, systems and know-how, and shall not, unless otherwise required by law, disclose such information to any third party without the other's prior written consent.

Proposer shall have the right to disclose the confidential information to Proposer's employees, consultants and agents on a need-to-know basis, provided that all consultants and agents agree to keep such information confidential pursuant to the terms and conditions of this Agreement.

§ 30: Federal, State, Local and Municipal Law, Ordinances, Rules and Regulations Compliance

Proposer shall provide appropriate Health Insurance Portability and Accountability Act of 1996 (HIPAA) compliance warranties under this agreement.

Proposer shall at all times observe and comply with all federal, state, local and municipal laws, ordinances, rules and regulations, specifically including the Health Insurance Portability and Accountability Act of 1996 (HIPAA), relating to the performance of their obligations hereunder or in any manner affecting this agreement. Proposer acknowledges that throughout the term of this agreement, it may have access to certain confidential patient information, commonly referred to as "protected health information" (hereinafter referred to as "PHI"). Proposer agrees to inform and fully educate all persons working for it or on its behalf on the proper use, handling and disclosure of PHI. Upon becoming aware of any improper use, handling or disclosure of PHI by any of its employees or agents, Proposer shall promptly report such use or disclosure to Authority in writing. It is acknowledged and understood by Proposer that the PHI disclosed



pursuant to this agreement may only be used for the expressly stated purposes under this agreement. Proposer hereby agrees that it will require its employees and agents to maintain and protect from unauthorized disclosure, PHI disclosed to or disseminated by Authority or its agents as a result of this agreement. Additionally, Proposer will promptly notify the Authority of the institution of any proceeding or request to obtain such PHI from the Proposer or its agents, upon becoming aware of such a proceeding. Proposer agrees to make a patient's PHI, in their possession, available for inspection by that patient upon request of Authority. Proposer further agrees to make available to the patient an accounting of all disclosures of that patient's PHI, upon request of Authority. Additionally, Proposer agrees to make the PHI of a patient available for amendment and incorporate said amendments to the PHI, if sufficient grounds exist to perform such amendment(s), as determined by the Authority.

To the extent required by applicable law or regulation, Proposer shall make its internal practices, books and records related to the use and disclosure of PHI available to the Secretary of Health and Human Services for purposes of determining compliance with applicable regulations. At the termination or expiration of this agreement, Proposer and its agents shall either return or destroy all PHI in their possession provided to them by Authority, or, if the destruction or return of such information is not feasible, shall extend the protections of this agreement and limit further uses and disclosures to those purposes that make the return or destruction of such information infeasible.

To the extent required or allowable under applicable law or regulation, if Proposer carries out any of its duties hereunder via subcontract, it agrees to include a clause similar to this section in such subcontracts. However, nothing in the foregoing sentence is intended to grant or establish any right on the part of Proposer to perform any of the duties set forth herein through subcontract. At all times, however, the use and disclosure of PHI hereunder shall be permitted after obtaining consents or authorizations, which comply with applicable laws. It is understood and agreed that Authority may terminate this agreement at any time if Proposer materially breaches the terms set forth under this section, as determined by the GHS.

§ 31: Group Purchasing Organization
Grady Health System is an exclusive member of MedAssets, Group Purchasing Organization.

§ 32: Performance Improvement
The contractor shall provide a detailed description of formal performance improvement criteria, patient, resident and customer satisfaction tools and a quality control program. The proposal shall include forms that will be used by the Contractor to collect and tabulate data.

The contractor shall describe methods and systems used to measure quality, describe the Contractor's plan for establishing a risk/reward incentive program based on quality measures. The Contractor must assure that services meet the Joint Commission and all other regulatory requirements.

§ 33: Vendor Registration
All vendors are required to complete a Vendor Registration Application through the GHS electronic vendor registration process prior to visiting any location or department of the health system. The registration allows GHS to have a complete profile of the vendors and all representatives that visit the health system to solicit products and services to GHS. The electronic Vendor Registration Application can be completed on the GHS website at www.gradyhealthsystem.org/vendors.

**CONTRACT CLAUSES
ACKNOWLEDGEMENT FORM**

Proposer must sign one of the acknowledgements below:

Proposer agrees to be bound by the terms and conditions stated in these Terms & Conditions: if awarded a contract.

(Print Name of Authorized Company Officer)

(Signature)

(Date Signed)

OR

Any proposed revisions, separate agreements or exceptions to the Terms and Conditions must be submitted in writing to GHS for review and approval form.

(Print Name of Authorized Company Officer)

(Signature)

(Date Signed)