

Attachment A

GRADY HEALTH SYSTEM STANDARD TERMS AND CONDITIONS

Terms and Conditions

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

§ 1: Product/Service Delivery Requirement

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

§ 2: Proposal and Pricing Lock-In

All proposals remain firm for a minimum of one year. If GHS has entered into an Agreement with Vendor, all pricing is firm for the term of the Agreement.

§ 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. The original invoice should be one original and one carbon copy. Mail all invoices to:

Attention: Invoice Processing
Grady Memorial Hospital Corporation
C/o Accounts Payable
50 Hurt Plaza, Suite 300
Atlanta, Georgia 30303

§ 4: Correct Billing Format Requirement

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 Vendor 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

Vendors are RESTRICTED AND PROHIBITED from submitting more than one proposal submission per Vendor 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 Vendor being disqualified. Alternate cost proposals may be provided for varying product brand names meeting stated specifications IN ONE PROPOSAL SUBMISSION.

§ 7: Review of Vendor's Performance

GHS reserves the right to closely monitor and review Vendor'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 Vendor'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: Equal Employment Opportunity (EEO) Clause

- 1) The Vendor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Vendor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- 2) The Vendor will, in all solicitations or advancements for employees placed by or on behalf of the Vendor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- 3) The Vendor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the contracting officer, advising the labor union or workers' representative of the Vendor's commitments under Section 2020 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4) The Vendor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 5) The Vendor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- 6) In the event of the Vendor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Vendor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 7) The Vendor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Vendor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Vendor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Vendor may request the United States to enter into such litigation to protect the interests of the United States.

§ 10: Term

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

§ 11: Payments to Vendor

All invoices upon receipt to GHS and approvals are net sixty (60) days. Vendor shall not charge interest on past due payments. Vendor shall seek to reconcile and collect any outstanding or past due invoices in a timely manner. Such reconciliation and collection activities are limited to one (1) year from the date of service or invoice, whichever is earlier.

§ 12: Payment to Vendor-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.

§ 13: Correct Billing Format Requirement

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

§ 14: Termination for Default for Nonperformance or Delay – Damage for Delay –Time Extensions

§ 14-1: Default

If the Vendor 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 Vendor, declare the Vendor in breach and terminate the Vendor'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.

§ 14-2: Time Extension

The Vendor's right to proceed shall not be so terminated nor the Vendor 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 Vendor in the performance of a contract with GHS; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or
- 2) The Vendor, 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.

§ 14-3: Erroneous Termination for Default

If, after notices of termination of the Vendor's right to proceed under the provisions of this clause, it is determined for any reason that the Vendor 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.

§ 14-4: 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.

§ 14-5: Performance Bond

Where applicable, at the request of GHS, Vendor 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.

§ 14-6: Liquidated Damages

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

§ 15: Compliance with a Drug Free Workplace Act

To the extent applicable to the work hereunder, Vendor 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 Vendor's employees during the performance of this Agreement; and
- 2) A written certificate shall be secured from each subcontractor hired by Vendor stating that: "As part of the subcontract with Vendor, subcontractor certifies to Vendor 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."

§ 16: 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.

§ 17: 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.

§ 18: Modifications of Services

GHS reserves the right to make changes in the Services including alterations, reductions therein or additions thereto. Upon receipt by the Vendor of GHS's notification of a contemplated change, the Vendor 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 Vendor's ability to meet the completion dates or schedules of this contract.

If GHS so instructs in writing, the Vendor 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 Vendor 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.

§ 19: Notices

(1) Any notice or demand under the terms of this agreement must be given or made by the Vendor 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
50 Hurt Plaza, Suite 1300
Atlanta, Georgia 30303
Fax #: (404) 489-6248
Attention: VPMM/EDMM

If to the VENDOR:

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

§ 20: Vendor's Obligation

The Vendor 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.

§ 21: 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.

§ 22: Personnel

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

§ 23: 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 Vendor. The Vendor shall not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations with GHS, nor shall the Vendor be authorized to use GHS's tax exemption number in securing such materials. The Vendor shall be responsible for payment of its own and its share of FICA and Social Security benefits with respect to this contract.

§ 24: Indemnification

The Vendor 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 Vendor, its agents, servants, or employees in the performance of services under this contract.

The Vendor 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 Vendor not included in the paragraph above and for which the GHS, its agents, servants, or employees are alleged to be liable.

§ 25: Successors and Assigns

GHS and the Vendor 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 Vendor 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 Vendor.

§ 26: 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.

§ 27: Access and Audits

The Vendor 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.

§ 28: Federal Access

Until the expiration of four (4) years after the furnishing of any service pursuant to this Agreement, Vendor 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 Vendor for such services. If Vendor 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, Vendor 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 Vendor for such service.

§ 29: Insurance

The insurance coverage provided by Vendor, 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 Employers' Liability Insurance: To comply with the applicable statutes.

The insurance carrier shall be licensed in the State of Georgia. Vendor shall name GHS as an additional insured by endorsement on all applicable policies. The premium cost of all insurance purchased by the Vendor for protection against risks assumed by virtue of the contract shall be borne by the Vendor 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 Vendor to provide certified copies of such policy or policies.

§ 30: 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.

Vendor shall have the right to disclose the confidential information to Vendor'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.

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

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

Vendor 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. Vendor acknowledges that throughout the term of this agreement, it may have access to certain confidential patient information, commonly referred to "protected health information" (hereinafter referred to as "PHI"). Vendor 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, Vendor shall promptly report such use or disclosure to Authority in writing. It is acknowledged and understood by Vendor that the PHI disclosed pursuant to this agreement may only be used for the expressly stated purposes under this agreement. Vendor 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, Vendor will promptly notify the Authority of the institution of any proceeding or request to obtain such PHI from the Vendor or its agents, upon becoming aware of such a proceeding. Vendor agrees to make a patient's PHI, in their possession, available for inspection by that patient upon request of Authority. Vendor further agrees to make available to the patient an accounting of all disclosures of that patient's PHI, upon request of Authority. Additionally, Vendor 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, Vendor 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, Vendor 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 Vendor 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 Vendor 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 Vendor materially breaches the terms set forth under this section, as determined by the GHS.

§ 32: Group Purchasing Organization

Grady Health System is an exclusive member of Vizient, Group Purchasing Organization.

§ 33: Performance Improvement

The Vendor shall provide a detailed description of formal performance improvement criteria, patient, resident and customer satisfaction tools and a quality control program. The Vendor shall include forms that will be used by the Vendor to collect and tabulate data.

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

§ 34: 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.gradyhealth.org/vendors.

§ 35: New Technology

- 1) New Technology Introduction. All new products must be presented to Materials Management through the Value Analysis process prior to the product being used.
 - a) "New Products" are defined as either new technology for the Supplier OR a product not previously used at GHS.
 - b) "Introduction" is defined as any action taken by the Supplier to market, deliver, or use such product in a procedure at any GHS facility. If approval is not received by Materials Management prior to product introduction, GHS shall not be liable for the cost of the product, and the product shall be considered a donation.
- 2) "Substantially Equivalent" Technology. For all new technology products, if a new product was submitted to the FDA using form 510(k) (Premarketing Submission), the product shall be considered as "substantially equivalent" to existing technology, and shall conform to the pre-established GHS equivalent pricing for such products. If a new product was submitted to the FDA using the Premarket Approval Application (PMA), the product shall be considered by GHS as new technology.
- 3) Introduction of New Items not Considered New Technology. Vendor agrees not to "introduce" any products at GHS without prior written approval, contracted pricing and terms from GHS.

§ 36: Key Performance Indicators and KPI Credits

- 1) Vendor shall provide and perform for GHS the Services in accordance with the Key Performance Indicators (the "KPIs") specified in the Agreement between the Vendor and GHS. The KPIs will be specifically stated in the Agreement.
- 2) Measurement and Reporting.
 - a) Unless otherwise specified in the Agreement, Vendor shall measure each KPI on a monthly basis. Vendor shall provide to GHS, on the 15th day of each month following the Effective Date of the Agreement, a report to verify Vendor's performance and compliance with the KPIs.
 - b) Vendor shall provide data and detailed supporting performance information for each report to GHS in machine-readable form suitable for use on a personal computer. Such data and detailed supporting performance information shall be considered GHS data. Vendor shall be able to use this performance data for its internal use as long as it does so without attribution to GHS.
 - c) Vendors shall provide the measurement tools and methodologies, as agreed upon by both Vendor and GHS, to sufficiently measure all of the KPIs contained in the Agreement. GHS and Vendor shall agree upon the measurements and methodologies for each KPI prior to execution of the Agreement and shall include these measurements and methodologies within the Agreement.
 - d) If, after the Effective Date of the Agreement, Vendor desires to use a different measuring tool or methodology for a particular KPI, Vendor shall obtain GHS' approval of the tool; provided, however, that if the Parties cannot agree on the required tool adjustment, Vendor will continue to use the measuring tool that had been initially agreed to by the Parties. It is not anticipated that changes in the monitoring tools will drive changes in KPIs; rather, the need to collect and accurately reflect the performance data should drive the development or change in performance monitoring tools.
- 3) KPI Credits.
 - a) "KPI Credit" means the credit Vendor shall provide to GHS in the event that Vendor fails to meet a KPI.
 - b) GHS shall be eligible for KPI Credits in the event that Vendor fails to meet KPIs for any three (3) or more months over the prior rolling twelve (12) month period.
 - c) The KPI Credit for each month that Vendor fails to meet the KPIs shall be equal to one twelfth (1/12th) of the total amount GHS is obligated to pay to Vendor annually under the Agreement.
 - d) If Vendor fails to meet the KPIs in two (2) or more consecutive months, the KPI Credit shall be twice the normal KPI Credit for such second and subsequent measurement periods during which the failure persists. By way of example and not as a limitation, if Vendor fails to meet a KPI in three (3) or more consecutive months and the amount of the applicable KPI Credit was \$1,000, the amount of the KPI Credit would be doubled to \$2,000 for the second and third and any subsequent consecutive failures.

- 4) Notification and Payment.
 - a) If GHS becomes entitled to receive a KPI Credit, Vendor shall notify GHS thereof in Vendor's standard monthly required reporting for KPIs. In each such report, Vendor shall describe in reasonable detail any failure to meet the KPI for the applicable month.
 - b) Each month Vendor shall remit to GHS, either as a credit on amounts due or as a refund, the KPI Credit applicable to the prior month.
- 5) Addition, Deletion and Modification of KPIs. Continuous Improvement.
 - a) GHS may add, delete, or change KPIs, at its sole discretion, by sending written notice to Vendor at least thirty (30) days prior to the date that such additions, deletions or changes are to be effective.
 - b) GHS and Vendor agree to the concept of continuous improvement and that KPIs should be modified during the Agreement to reflect this concept. At the end of each year of the Agreement, the GHS and Vendor shall review the prior year's actual performance for the KPIs and discuss potential modifications to such KPIs, taking into consideration actual performance data, changes in GHS business requirements, and operational and technical improvements.
- 6) Exceptions. Vendor shall not be responsible for a failure to meet a KPI to the extent that such failure is directly attributable to any of the following:
 - a) GHS' actions in breach of, or failure to perform its obligations under, the Agreement with Vendor.
 - b) Willful misconduct or violations of law by GHS.

§ 37: Federal and State Program Participation.

- 1) Vendor represents and warrants that it and any of its directors, officers, employees, or agents providing services under this Agreement:
 - a) Are not "sanctioned persons" under any federal or state program or law;
 - b) Have not been listed in the current Cumulative Sanction List of the Office of Inspector General for the United States Department of Health and Human Services for currently sanctioned or excluded individuals or entities;
 - c) Have not been listed on the General Services Administration's List of Parties Excluded individuals or entities;
 - d) Have not been listed on the General Services Administration's List of Parties Excluded from Federal Programs;
 - e) Have not been convicted of a criminal offense related to health care; and
 - f) Is not or has not been investigated, under investigation, or found guilty of any act by the Office of the Inspector General of the United States.
- 2) Vendor will provide proof that its employees and staff are adequately trained in the area of Corporate Compliance and Ethics and that each employee has been cleared by a criminal background check and is not barred or excluded from participating in a federal or state healthcare program.