

NEIL ABERCROMBIE  
GOVERNOR



**STATE OF HAWAII**  
**HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND**

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**ADMINISTRATOR**  
SANDRA L. YAHIRO

February 7, 2014

ADDENDUM 1

TO

REQUEST FOR PROPOSALS

NO. 14-002

SEALED OFFERS FOR  
PHARMACY BENEFIT MANAGEMENT SERVICES

The following are responses to written questions submitted:

	Question	Answer
1	Offer Form OF-1 refers, in the first full paragraph, to "Specifications". As this term is capitalized, can EUTF confirm whether it is intended to refer to one or more specific sections of the RFP?	Specifications may refer to any section in the RFP where the EUTF is stipulating what it expects from the Offeror.
2	The format for Attachment 5 states, at the end, "List all information believed to be confidential and not to be disclosed to the public. Identify the page numbers and sections in the proposal where the information is located." Is this instruction in addition to the similar instruction for Attachment 4? Does it relate only to the exceptions identified in Attachment 5, if any?	Please see the amended Attachment 5, Exceptions, which has been attached.
3	Section IV, Statement of Work:  Paragraph 12 on pages 30-31 discusses sharing claim information daily with the medical vendor in support of the single Out of Pocket Maximum imposed by PPACA. In light of the recent guidance from the Departments of Labor, Treasury and HHS (please see FAQ 3, <a href="http://www.dol.gov/ebsa/faqs/faq-aca18.html">http://www.dol.gov/ebsa/faqs/faq-aca18.html</a> ), is EUTF considering dividing the maximum out of pocket between its medical and pharmacy plans?	That decision has not been made by the Board.

4	<p>Section VI, Services:</p> <p>Paragraph 1.9 states that discount guarantees shall be stated as, "(Aggregate Ingredient Cost/Aggregate AWP)". We more typically see minimum AWP discount guarantees stated as AWP minus (1 minus (Aggregate Ingredient Cost/Aggregate AWP)). In such a case a drug with an undiscounted AWP of \$100 and an adjudication price of \$80, would be stated as "AWP-20%". Is it acceptable to state guarantees in this manner?</p>	Yes, that is acceptable.
5	<p>Section VI, Services:</p> <p>Paragraph 2.27 refers to adjudicating compound medications with the same dispensing fee and logic associated with traditional claims. Given CMS's requirements for compliance with the NCPDP D.0 compound adjudication standards, bidder has implemented and applies the NCPDP D.0 standard. Can EUTF confirm that paragraph 2.27 is satisfied if a bidder complies with NCPDP D.0?</p>	No, please confirm your ability to adjudicate compound medications with the same dispensing fee and logic associated with traditional claims.
6	<p>Section VII, Financial Section:</p> <p>The last row in the chart in paragraph 3.1.10 asks for Rebates to be stated as a percentage of Brand ingredient cost, however, in paragraph 1.13 of Section VI, the RFP indicates rebates should be guaranteed on a per prescription basis. Should bidders provide a guaranteed minimum dollar amount of rebates on a per prescription basis in the chart in paragraph 3.1.10, rather than a percentage? Likewise for the last row in the chart in paragraph 3.2.10 (labeled 3.1.10) on page 48 of the RFP?</p>	Please provide guaranteed rebates on a per prescription basis.
7	<p>The term "dedicated" is used in the RFP (i.e., dedicated customer service representatives). Please confirm that "dedicated" means that all support for EUTF will be consistently provided by these teams, however they may also support other clients/members during slower volume periods so long as the services standards to EUTF are met.</p>	The EUTF is looking for a consistent team that does not have to be exclusive to the EUTF.
8	<p>On page 38 of the RFP, it states that U&amp;C claims are to be excluded, yet on page 49, it seems to indicate that U&amp;C is to be utilized in the discount. Should U&amp;C be excluded?</p>	Yes, U&C claims should be excluded.
9	<p>On page 38 of the RFP, it lists the claim types to be excluded. In Section 4.1.1 (on page 48) it</p>	No.

	asks for guaranteed discounts for excluded claims. Is State of Hawaii asking for separate guarantees on the claims types that are excluded on page 38?	
10	Under the EGWP Performance Guarantee, it states that CVS is to put 50% of the admin fee at risk. This is referring to the per claim admin fee correct?	All administrative fees have been required in the RFP as per employee/per retiree inclusive. These are the fees that would be put at risk.
11	Please confirm that the instructions on p.6, section 1.11 (Submission of Proposals) regarding proposal submission (one signed master proposal, 10 hard copies, 12 electronic copies, and one signed redacted hard copy) supersede the instructions on the page prior to the Table of Contents, which indicate only a hard copy of the proposal to the EUTF.	Offerors shall submit proposals in the manner described in Section 1.11, Submission of Proposals.
12	The instructions on p. 6, Section 1.11 also refer to a single-sided master proposal that is unbound. Is it acceptable to provide this copy in a separate envelope(s) appropriately marked "Master"? Please advise if there are any other specific packaging or formatting requirements for this copy.	Yes.
13	Please confirm that the PBM is able to format the questionnaire in a usable format as long as the numbering and wording of the questions is not altered. Please also confirm that the removal of the "yes/no" response formatting (i.e. question 3.1.3) is acceptable so long as the PBMs response begins with yes or no.	Reformatted questions are not acceptable.
14	Section II: Please clarify what deliverable is to be included with the proposal to satisfy the "Plan comparison summary (section V)" in the event that no deviations are necessary.	If there are no deviations in Section V, submit no deviations for Section V in the Attachment 5, Exceptions.
15	Section II: Please clarify whether or not compliance certificates are to be provided with the RFP as Section II Item 3 "current licenses and regulations" reads that OFFEROR must provide a response to this item within the cover letter but evidence of registration and copies of certificates are not required with the RFP submission.	As stated in Section II, compliance certificates shall be included in the proposal.
16	Section II, items 6-11, 13, 15-17:  Confirm that no response or deliverable is needed in response to these items at the time of RFP submission.	As stated in Section II, number 12, on page 19, Any exceptions to terms, conditions, or other requirements in any part of these specifications must be listed in Attachment 5, Exceptions. Offeror shall reference the RFP section where the exception is taken, a description of the

		exception taken, and the proposed alternative, if any. Otherwise, it will be considered that all items offered are in strict compliance with the specifications. If there are no exceptions, no response is necessary.
17	Section II, item 14:  Please confirm that Segal will provide the appropriate data and format to complete this requirement.	An amended file will be posted as soon as it is available.
18	Section IV:  Please clarify what is meant by “walk in customer service located in the downtown civic center in Honolulu”.	An office that allows for participants in the plans to be serviced by the contractor.
19	Section IV:  Please clarify what is meant by “The EUTF will not pay an additional amount for any ancillary charges” – is this to mean ancillary charges not outlined in the Financial Section? Is EUTF truly looking for an “all in” PEPM/PRPM admin fee without ancillary charges?	As used throughout the RFP, ancillary charges are to be included in the administrative fee. All administrative fees should be on a per employee/per retiree per month basis.
20	How many and what type of member communications does the EUTF provide per member per month? Would the EUTF be amendable to accepting 5 communications per member per year (inclusive of the member welcome packet) included in the administrative fee?	The number of the communications varies based on CMS changes to the formulary.  The EUTF will not be limited to 5 communications per member per year. For the commercial and EGWP plans, there are times when more than 5 communications per year are sent to members.
21	Regarding the “Open Enrollment” item (Section IV, p. 28, item 7.), how many of the informational sessions referenced were held for actives and retirees respectively during the last plan year?	For actives, there were about 65 open enrollment sessions. For retirees, there were about 17 open enrollment sessions.  Please note that these can change from year to year and special open enrollment sessions may be needed.
22	Regarding the “Other Enrollment Assistance” item (Section IV, p. 28, item 8.), how many informational meetings (e.g., pre-retirement and retirement informational meetings), benefit fairs, and/or informational meetings for employees facing a reduction in force were held for actives and retirees respectively during the last plan year?	Active employees: Approximately 74 informational meetings.  Retired employees: Approximately 41 informational meetings.
23	Section VI:  Section 1: Please confirm that EUTF will accept PBM exceptions to any applicable response and	Offerors may propose exceptions to any section of the RFP. However, all of these must be listed to Attachment 5, Exceptions. The EUTF

	not 1.1 only.	reserves the right to accept or reject any request for exceptions.
24	<p><i>Section VI:</i></p> <p>In the event the PBM takes exception to a requirement, please confirm that the exception can be placed both in response to the question and in Attachment 5.</p>	Yes.
25	<p><i>Section VI:</i></p> <p>Question 2.2: What “appropriate definitions” is this question referring to?</p>	Question 2.2 does not refer to “appropriate definitions.”
26	<p><i>Section VI:</i></p> <p>Questions 3.1.1 and 3.2.1: Please confirm that a “yes/no” response is requested for each service listed and that costs for each service indicated with a “no” should be outlined within question 3.1.2/3.2.2.</p>	Yes.
27	<p><i>Section VI:</i></p> <p>Question 3.1.10: Please confirm this chart does not apply to active employees as indicated.</p>	This chart applies to active employees.
28	<p><i>Section VI:</i></p> <p>Questions 4.1.1 and 4.2.2: Please confirm that pricing is to be completed based on exclusions identified in question 1.9.</p>	Confirmed.
29	<p><i>Section VI:</i></p> <p>Question 4.1.3 and 4.2.1: The generic discount language conflicts with the exclusions identified in question 1.9. Please clarify if U&amp;C claims are to be included or excluded from the generic guarantee.</p>	U&C claims are to be excluded from the generic guarantee.
30	<p><i>Section VI:</i></p> <p>Section 5: What allowance amounts does EUTF feel are acceptable?</p>	Any deviation from the current plan will be discussed by the evaluation committee.

31	<p><i>Section VI:</i></p> <p>Question 6.1: Please confirm that the GDR provided applies to the active employee group only.</p>	This refers to active and non-Medicare retirees.
32	<p><i>Section VI:</i></p> <p>Question 6.1.8: Please confirm that the specialty analysis applies to the active employee group only.</p>	This applies to active and non-Medicare retirees.
33	<p><i>Section VI:</i></p> <p>Question 7.2.2e: Please confirm that EUTF is interested in 2012 statistics.</p>	Confirmed.
34	<p><i>Section VI:</i></p> <p>Question 7.5.9: Please elaborate on what is meant by “automated services”.</p>	Services that do not require the intervention of a person such as automated telephone and web-based services.
35	<p><i>Section VI:</i></p> <p>Question 7.10.14 and 7.10.30: confirm these responses should be reflective of mail order services and capabilities only.</p>	Confirmed.
36	<p><i>Section VI:</i></p> <p>Question 7.10.14: Please confirm mail order statistics should be from 2010-2012. In the event that the proposed mail order facility has not been in operation for that length of time, please confirm an answer of “not applicable” will be accepted without penalty.</p>	For question 7.10.15: Provide statistics for a Hawaii-based mail order facility available for 2010, 2011, and 2012. If there are no Hawaii-based facilities for those years, provide the total statistics for all mail order facilities and indicate as such.
37	<p><i>Section VI:</i></p> <p>Question 7.11.12: Please confirm that this response should be reflective of specialty pharmacy services and capabilities only.</p>	Disregard question 7.11.12.

38	<p><i>Section VI:</i></p> <p>Question 7.11.15: Please confirm the word “unlimited” does not apply to the question.</p>	Confirmed.
39	<p><i>Section VI:</i></p> <p>Question 7.12.9: Please confirm that a Geo Access report is not being requested with the RFP submission.</p>	No. We are requiring a GeoAccess report with the proposal.
40	<p><i>Section VI:</i></p> <p>Question 7.12.2 and 7.12.18: These questions are asking for the same information. Please confirm which item should be responded to.</p>	Respond to both 7.12.2 and 7.12.18.
41	<p><i>Section VI:</i></p> <p>Question 7.12.23: Please confirm that any fees that may be applicable with services provided in the response can be included in section 3.2 only so that financial information is contained within one section.</p>	Confirmed.
42	<p><i>Section VI:</i></p> <p>Question 7.12.24: Please confirm that the intended vendor response is “yes/no” and any fees that may be applicable with services provided in the response can be included in section 3.2 only so that financial information is contained within one section.</p>	Confirmed.
43	<p>Section IX; Attachment 4:</p> <p>Please confirm there is no specific format that this information must be presented in so long as the page numbers and proposal sections are identified.</p>	Provide an explanation of information designated as confidential in Attachment 4, Confidential Information.
44	<p>Section IX; Attachment 5:</p> <p>Please confirm that exceptions may be marked confidential and included in Attachment 4.</p>	Exceptions taken in Attachment 5, Exceptions may also be included in Attachment 4, Confidential Information.
45	Section IX; Attachment 6:	If there are exceptions to performance

	Please confirm the method of response EUTF intends for this section.	guarantees, list all exceptions taken in Attachment 5, Exceptions. However, the EUTF reserves the right to accept or reject any request for exceptions. If no exceptions are listed, the EUTF will assume the terms of the performance guarantees are accepted.
46	Section IX; Attachment 6:  Confirm that any exceptions to the performance guarantees can be included in Attachment 5.	Confirmed.
47	Section IX; Attachment 6:  Confirm that PBM can modify the annual per year penalty dollars at risk under Implementation guarantees.	No.
48	Does Hawaii require any specific licensing beyond a certificate of authority from the Department of Commerce and Consumer Affairs, which indicates that the PBM has complied with all of the registration requirements of the Business Corporation Act of Hawaii, for PBMs to conduct business in the state?	Please check with the various Hawaii licensing agencies.
49	Under Special Conditions, 7. Insurance, e. 2., the RFP states that "The state of Hawaii, the Hawaii Employer-Union Health Benefits Trust Fund, the EUTF Board of Trustees, and trustees of the EUTF Board are added as additional insureds with respect to operations performed for the State of Hawaii and the EUTF." Please explain exactly what is meant by "with respect to operations". Please identify all policies on which EUTF is to be named as an additional insured.	"With respect to operations" is meant to encompass all of the work covered by the RFP which will be performed by the contractor.  The EUTF shall be added as additional insured on the commercial general liability policy and the automobile policy.
50	Is it possible to get an abstract of claims data showing NABPs in order to perform network disruption analysis?	An expanded claim file including NABPs will be sent to all offerors who submitted a confidentiality agreement.
51	Can we get a list of the zip codes or counties by island?	This is public information.
52	The claim set that we received is representative up to July 2013. With the legislation passed (and noted within the RFP), will we be receiving a more current claims set to review, reflecting the change in this mandate?	No.
53	For the onsite mail dispensing facility, can the PBM present their plan for location and capabilities?	Yes.

54	Is there a specific location that would be preferred for the mail dispensing facility?	No.
55	Can you please expand upon the auto-refill program at mail?	The dispensing of medications is made automatically in the quantity dispensed at the last fill of the prescription.
56	May deviations be provided for page 177 Exhibit F: Business Associates Agreement? If yes, please confirm if deviations should be redlines or should be deviations listed in Attachment 5?	Yes. Deviations should be redlined and listed in Attachment 5, Exceptions.
57	With the plan design information provided in Exhibit E on page 176, and the separate claims data filed provided for the proposal, what data field(s) in the provided data will help us determine which benefit plan design group to which the claim belongs? CarrierID? AccountID? GroupID?	We do not understand this question.
58	Section 1.4 (pg. 3) – Retiree Plans  Please confirm the time period of the option third contract period is: January 1, 2017 through December 31, 2017 (not December 31, 2018 as indicated in the RFP)	Confirmed.
59	Under the Scope of Work (Section IV), page 28, please clearly define the geographic boundaries of the “downtown civic center of Honolulu”.	Bounded by: Nuuanu Stream on the west, Ward Avenue on the east, Vineyard Boulevard to the north and Honolulu Harbor to the south.
60	Please confirm that the RFP is due on February 19, 2014 at Noon at the EUTF Offices and not to Segal in California.	Confirmed.
61	Please confirm that the fees should be submitted on a per employee/per retiree basis and not a per member or per subscriber.	Confirmed. Fees should be submitted on a per employee/per retiree per month basis.
62	Is there a word count limitation on the responses for RFP 14-002 similar to the word limitation on the responses for RFP 14-001?	There are no word count limitations for RFP 14-001 and RFP 14-002.
63	Scope of Work, Processing Enrollments, Cancellations and Terminations and Weekly 834 file loads (on page 27):  Does the measurement of the 48 hour timeframe begin upon receipt of the electronic data transmission or hard copy form? For data received after business hours, will the 48 hour timeframe begin at 7:45 am the next business day?	The EUTF will change 48 hours to two (2) business days. As such, the Offeror will have until 4:30 PM HST two business days following the day of receipt of the EUTF’s file to complete the processing of data. For example: if the Offeror receives the EUTF’s file on Monday (any time Monday from 12:01 AM to 11:59 PM), the Offeror will be expected to process the file no later than Wednesday, 4:30 PM HST.
64	Section IV, Item 10. Reports and Accountings,	Please see the amended Section IV, Item 10,

	<p>page 30 states that the “Contractor shall provide an annual plan performance report with the incurred and paid accounting report within 120 days after June 30 of each plan year ...”</p> <p>Since the Actives and Retirees have different contract periods, should this be “after each contract year” instead?</p>	<p>Reports and Accountings, which has been attached.</p>
65	<p>In Section IV, Item 10. Reports and Accountings, page 30, states “Contractor shall provide monthly reports on financial operations in hard copy and electronically. The monthly financial reports shall be due on or before the 10th day of the month following the month that is the subject of the report.”</p> <p>Is this report different from the invoices mentioned in Section IV, Item 13. Payment to Contractor, page 31?</p> <p>If yes, what information is required in the monthly financial reports due by the 10th day of the month following the month that is the subject of the report (Section IV, Item 10. Reports and Accountings, page 30, 3rd paragraph) and the invoice from the Contractor (Section IV, Item 13. Payment to Contractor, page 31, 1st paragraph)?</p>	<p>Yes, this is a different report. The information required includes: claims, administrative fees, dispensing fees, number of eligibles and amount of rebates.</p>
66	<p>Section IV, Item 13. Payment to Contractor, page 31 states that “the EUTF shall pay the Contractor all invoiced amounts for within fifteen (15) days after the EUTF receives an invoice from the Contractor, on the fifteenth and thirtieth of each month.”</p> <p>Please confirm that the EUTF wants to be invoiced semi-monthly (2 invoices per month) on the 15th and 30th of each month (for the pharmacy benefit (claims) costs).</p>	<p>Confirmed.</p>
67	<p>Section IX Performance Guarantees – Account Management.</p> <p>The performance guarantee for “Delivery of Standard Reports” is “Within 30 days after end of reporting quarter.”</p> <p>Please describe what reports are subject to this performance guarantee.</p>	<p>Financial reports.</p>
68	<p>Section VI (page 36):</p> <p>What clinical programs are offered to the EUTF beneficiaries today?</p>	<p>Pharmacy Advisor Support, Mail Service Pharmacy, National Network, Generic Step Therapy, Dispense as Written (DAW ) Penalties, Prescription Savings Guide, Targeted Generic Alternative Mailings, Prior Authorization and Appeals, POS Utilization Management, Safety Review, Safety and Monitoring, Specialty</p>

		Guideline Management, Diabetic Meter Program, ExtraCare® Health Card.
69	<p>Section I, 8. Transition Procedures (a) (pg. 15):</p> <p>What is meant by “any outstanding order” or “contracts?”</p> <p>Can you provide an example of a potential outstanding order and an outstanding contract?</p>	<p>Outstanding order: an outstanding and unfilled prescription, or claims that have yet to be processed. Disregard the reference to contracts.</p>
70	<p>Section VI – Services to be provided (pg. 36):</p> <p>What is the definition/scope of IT services?  What are IT functionality requirements?  What are the online/real time requirements?  What hours of operation are required for the local call center in Hawaii?</p>	<p>These services include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• understanding the EUTF’s enrollment files in HIPAA 834 EDI file format;</li> <li>• initial setup of carrier specific data elements in the 834 EDI file;</li> <li>• initial setup of secure FTP data transfer and PGP file encryption with the EUTF;</li> <li>• the ability to receive via secure FTP the EUTF’s encrypted 834 EDI files on a weekly basis;</li> <li>• processing the EUTF’s 834 EDI files to integrate enrollment data into carrier’s database on a weekly basis;</li> <li>• having IT staff available to answer questions on file processing issues by telephone or email; and</li> <li>• having IT staff available to make changes to contractor’s system if the EUTF makes changes to the 834 EDI file elements.</li> </ul> <p>Please see Section VI, Part 2, Contractual Expectations, Number 2.9, of the RFP for online and real time requirements.</p> <p>Please see the amended Section IV, Item 2, Customer Service Office, and Item 6, Provision of Information and Telephone Access which have been attached.</p>
71	<p>Section VI – Services to be provided (pg. 37, #1.4):</p> <p>Can the EUTF provide the current contractor’s formulary?</p>	<p>The abridged formulary for active employees is available on the Caremark website:</p> <p><a href="https://www.caremark.com/portal/asset/caremark_recaprclaimsdruglist.pdf">https://www.caremark.com/portal/asset/caremark_recaprclaimsdruglist.pdf</a></p> <p>The abridged formulary for retired employees is available on the SilverScript website:</p> <p><a href="https://www.silverscript.com/learn/learn-formulary-updates.aspx">https://www.silverscript.com/learn/learn-formulary-updates.aspx</a></p>

		A full formulary will be released to the successful Offeror upon award.
72	When the RFP refers to days, is it business days or calendar days? And does that apply to anytime throughout the RFP whenever days are listed? For example, Section 2.3 of the RFP states, "Contractor agrees to 21-day turnaround time to provide its responses to claims audit findings." In another example section 7.5.31 says, "Confirm that you agree to EUTF payment procedures as described in Section IV, Payment to Contractor. Please confirm that the Contractor agrees that the EUTF has fifteen (15) days after receipt of invoice to pay the Contractor. What methods of payment are available (e.g., ACH, Direct Deposit, SurePay, Checks)? Are there any exceptions to the standard payment terms in #13 of section IV?"	Unless otherwise specified, "days" in the RFP refers to calendar days.
73	When referring to specialty drugs, what definition is being used, the Offeror's or the EUTF's? If EUTF, we need to be supplied with how the agency defines specialty drugs and the benefit parameters regarding the EUTF's definition of specialty drugs.	Please include the offeror's definition.
74	With regards to Section V and matching current benefits, will we be given any and all documentation/information needed Plan reference document lists high-level co-pays, but not things like exclusions, exceptions to the standard co-pays, definition of terms, etc. matching of benefits to ensure member disruption goes beyond co-pay amounts	Yes. Upon award of contract.
75	Clarification on dependent eligibility. Section IV, page 32 states, "Dependent children are eligible until age 26 for actives. Also eligible are retired employees and their dependents (spouses and dependent children to age 24 if unmarried and full-time students)." In Exhibit C, page 26, section 3.01 (b)(2) says, "An employee- beneficiary or domestic partner's unmarried child, provided the child is either under the age of nineteen or a full-time student and under the age of twenty-four." Which definition will apply?	For active employees, dependent children are eligible until age 26.  For retired employees, dependent children are eligible to age 24 if unmarried, full time students. Otherwise, dependent children are eligible up to age 19.

## **Changes are made to the following:**

- Section 1.29 Special Conditions, Item 7, Insurance
- Section IV, Item 2, Customer Service Office
- Section IV, Item 6, Provision of Information/Telephone Access
- Section IV, Item 10, Reports and Accountings
- Attachment 5, Exceptions
- Exhibit D, General Conditions

### **1.29 Special Conditions, Item 7, Insurance, REPLACE with the following:**

7. Insurance. At its sole cost and expense, the contractor shall obtain and keep in force throughout the entire term of the contract and any extensions thereof, the following types of insurance, in the minimum amounts specified and in the form hereinafter provided for:
  - a. A professional liability insurance policy or policies that cover claims resulting from the contractor's negligent acts, errors or omissions, breach of contract, breach of fiduciary or other duty, in providing services under the contract. The policy or policies shall have limits of liability, per occurrence and in the aggregate, in amounts that are reasonably satisfactory to the Board. Initially, the insurance policy must have limits of liability in the amount of at least FIVE MILLION AND NO/100 DOLLARS (\$5,000,000), per occurrence and in the aggregate.
  - b. A fidelity bond, commercial crime policy, or other equivalent insurance that provides insurance coverage or similar protection to the EUTF against forgery, theft, robbery, fraud, dishonest and criminal acts committed by any of the contractor's employees that causes the EUTF to sustain monetary loss. The limits of such bond or policy shall be FIVE MILLION AND NO/100 DOLLARS (\$5,000,000) per occurrence and in the aggregate.
  - c. Commercial general liability insurance coverage against claims for bodily injury and property damage arising out of all operations, activities or contractual liability by the Contractor, its employees and subcontractors during the term of the Contract. This insurance shall include the following coverage and limits specified or required by any applicable law: bodily injury and property damage coverage with a minimum of \$1,000,000 per occurrence; personal and advertising injury of \$1,000,000 per occurrence; advertising liability insurance of \$1,000,000 per occurrence; and with an aggregated limit of \$2,000,000. The commercial general liability policy shall be written on an occurrence basis and the policy shall provide legal defense costs and expenses in addition to the limits of liability stated above. The Contractor shall be responsible for payment of any deductible applicable to this policy. Throughout the entire term of the contract, the EUTF, the Board and its trustees shall be named as additional insureds on the commercial general liability insurance policy, and the policy shall contain the following clause: "The State of Hawaii, the Hawaii Employer-Union Health Benefits Trust Fund (EUTF), the EUTF Board of Trustees, and trustees of the EUTF Board are added as additional insureds with respect to operations performed for the State of Hawaii and the EUTF."
  - d. Automobile liability insurance covering owned, non-owned, leased, and hired vehicles with a minimum of \$1,000,000 for bodily injury for each person, \$1,000,000 for bodily injury for each accident, and \$1,000,000 for property damage for each accident. Throughout the entire term of the contract, the EUTF, the Board and its trustees shall be named as additional

insureds on the automobile liability insurance policy, and the policy shall contain the following clause: "The State of Hawaii, the Hawaii Employer-Union Health Benefits Trust Fund (EUTF), the EUTF Board of Trustees, and trustees of the EUTF Board are added as additional insureds with respect to operations performed for the State of Hawaii and the EUTF."

- e. Any and all other insurance that is required by applicable law and that is reasonably necessary in order for contractor to perform the work and services required under the contract. The insurance policies shall have limits of liability, per occurrence and in the aggregate, in amounts that are reasonably satisfactory to the Board, as measured by what a reasonably prudent trustee would require of a contractor in similar circumstances.

The adequacy of the coverage afforded by the contractor's insurance shall be subject to review by the Board, from time to time, and if it appears that a reasonably prudent trustee, operating a trust fund similar to that operated by the Board, would require an increase in the limits of liability of such insurance, contractor shall to that extent take all necessary actions to increase such limits.

All the required insurance shall be carried with insurance carriers that have a general policyholder's rating of not less than A and a financial rating of no less than VII in the most current Best's Insurance Reports. If the Best's ratings are changed or discontinued, the parties shall agree to an equivalent method of rating insurance companies.

Throughout the entire term of the contract, the EUTF, the Board and its trustees shall be named as additional insureds on all the insurance policies required hereunder except for the professional liability/errors and omissions policies and the fidelity bond or commercial crime policy. At the commencement of the contract, the contractor shall provide the Board with certificates of insurance showing that it is carrying all the insurance required hereunder. At or prior to the expiration of all insurance policies required hereunder, the contractor shall provide the Board with certificates of insurance showing the renewal or replacement of such insurance policies. The contractor will immediately provide written notice to the EUTF Board should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

Each insurance policy required by this contract, including a subcontractor's policy, shall be endorsed to provide that it is primary insurance and not contributing or excess over any coverage that the EUTF, Board or State of Hawaii may carry.

The insurance coverage required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the contract, including supplemental agreements.

Upon contractor's execution of the contract, the contractor agrees to deposit with the State certificate(s) of insurance necessary to satisfy the State that the insurance provisions of this contract have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the State during the entire term of this contract, including those of its subcontractor(s), where appropriate.

Upon request by the State, contractor shall be responsible for furnishing a copy of the policy or policies.

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

The procuring of such required insurance shall not be construed to limit contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this contract. Notwithstanding said policy or policies of insurance, contractor shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

**Section IV, Item 2, Customer Service Office, REPLACE with the following:**

2. Customer Service Office

During the entire term of the contract and fully operational by Open Enrollment Period for Retirees in October 2014, the contractor must maintain the following located in the State of Hawaii:

A customer service office in Honolulu to respond on a daily basis to the EUTF staff.

Personnel, systems, and equipment at the customer service office that is reasonably sufficient to provide all the customer services proposed by contractor and required under the contract

An employee and retiree toll free telephone service center to respond to telephone inquiries from participants, with staffing sufficient to manage the call volume of the employee and retiree participants and their dependents. The call center shall be open and available 24 hours a day, seven days a week. The call center must record all calls and retain same for a minimum of one year from the date of the call.

A walk in customer service center located in the downtown civic center in Honolulu to service participants in the plans. The walk in customer service center shall be open between the hours of 7:45 AM to 4:30 PM, Monday through Friday, except State observed holidays.

See number 6, Provision of Information/Telephone Access, below.

**Section IV, Item 6, Provision of Information/Telephone Access, REPLACE with the following:**

6. Provision of Information/Telephone Access

Contractor shall have a local, knowledgeable staff available to answer inquiries from EUTF staff and EUTF employee-beneficiaries and dependent beneficiaries regarding: (1) the benefits provided by contractor; (2) contractor's benefit plans, forms, and procedures; (3) enrollment status; (4) premium costs; (5) claims and claim procedures; (6) COBRA; and (7) other matters

pertaining to the benefit plans provided under the contract. A toll-free telephone service center located in the State of Hawaii to respond to inquiries from members shall be open and available 24 hours a day, seven days a week. A walk in customer service center located in the downtown civic center of Honolulu to service participants in the plans shall be open between the hours of 7:45 AM to 4:30 PM, HST Monday through Friday, except State holidays.

At its own cost, contractor shall draft, print, and regularly update written information that describes its benefit plan(s) in detail and a list of its providers. Upon request, the written information and list shall be provided to the EUTF's employee-beneficiaries and dependent-beneficiaries.

#### **Section IV, Item 10, Reports and Accountings, REPLACE with the following:**

##### **10. Reports and Accountings**

All reports that the contractor is required to give to the EUTF under the contract shall be in form and substance reasonably satisfactory to the EUTF. Upon reasonable advance notice, the EUTF may require changes in the form of the reports or may request that the reports contain different or additional information.

Contractor shall provide monthly operation reports to the EUTF. The monthly operations reports shall initially be in a letter format and each report shall be due on or before the 10th day of the month following the month that is the subject of the report. The monthly operations reports shall include information including, but not limited to, the following: (1) operational issues pertaining to EUTF members participating in the contractor's plans such as member mailings or network changes; (2) issues raised by or with the contractor and correspondence to or referred to the contractor; (3) publications or press releases relating to the contractor's plans that may be of interest to EUTF members; (4) community activities relating to the contractor that may be of interest to the EUTF members; (5) any legal actions or proceedings involving EUTF members; and (6) any complaints by EUTF members to the contractor or the Insurance Division relating to the contractor's plans or the contractor's administration of EUTF self-insured plans.

Contractor shall provide monthly reports on financial operations in hard copy and electronically. The monthly financial reports shall be due on or before the 10th day of the month following the month that is the subject of the report.

Contractor shall provide quarterly reports on performance standards in hard copy and electronically. The quarterly reports shall be due on or before the 30th day following the end of the quarter that is the subject of the report. Contractor shall also provide quarterly financial and enrollment reports by bargaining unit.

Contractor shall provide an annual plan performance report with the incurred and paid accounting report within 120 days after June 30 of each contract year for active employees and 120 days after December 31 of each contract year for retirees as well as any recommendations to improve the plan design or plan administration. The report shall be provided in hard copy and electronically. There shall be two (2) separate reports, one for actives and one for retirees. The retiree report shall be split between Medicare and non-Medicare retirees.

Upon request, contractor shall provide to the EUTF a report containing information on all claims received and/or processed by contractor during a specified period of time. Such a report shall be provided electronically.

Upon reasonable advance notice, the EUTF may request special reports on matters pertaining to contractor's benefit plans and/or contractor's performance of the contract.

**Attachment 5, Exceptions, and Exhibit D, General Conditions, REPLACE with the following:**

ATTACHMENT 5

EXCEPTIONS

Should Offeror take any exception to the terms, conditions, specifications, or other requirements listed in the RFP, Offeror shall list such exceptions in the space below. Offeror shall reference the RFP section where exception is taken, a description of the exception taken, and the proposed alternative, if any. The State reserves the right to accept or reject any request for exceptions.

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# GENERAL CONDITIONS

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## GENERAL CONDITIONS

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

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

3. Personnel Requirements.

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

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

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

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

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

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

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

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

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

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

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
- (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

### 13. Termination for Default.

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

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

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

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

#### 14. Termination for Convenience.

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

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

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

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

- d. Compensation.

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

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

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

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

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

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

- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;

- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or

- (C) Within such further time as may be allowed by the Agency procurement officer in writing.

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

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

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

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

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

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
  - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
  - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

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

19. Modifications of Contract.

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

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

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

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

21. Price Adjustment.

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

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

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

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

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
  - (5) Method of shipment or packing of supplies; or
  - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
  - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
  - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
  - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
  - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
  - b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.

31. Records Retention.

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

32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

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

"Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:

    - (1) Social security number;
    - (2) Driver's license number or Hawaii identification card number; or

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

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

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

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

e. Records Retention.

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