Employees' Retirement System of the State of Hawaii

and

Hawaii Employer-Union Health Benefits Trust Fund

REQUEST FOR EXPRESSION OF INTEREST

Banking Services

EXPRESSION OF INTEREST TO PROVIDE BANKING SERVICES

Introduction

The Employees' Retirement System of the State of Hawaii (ERS) together with the Hawaii Employer-Union Health Benefits Trust Fund (EUTF) are seeking proposals from banks, located within the City & County of Honolulu, to provide banking services. We encourage banks that will offer the highest quality of service and various technological advances that may improve our banking, cash management and customer service capabilities, to submit a comprehensive response to this request.

The ERS and the EUTF are attached agencies of the State of Hawaii, Department of Budget and Finance. The ERS and EUTF are jointly issuing this Expression of Interest (EOI) in anticipation of reducing banking fees should the same bank receive an award of contract from both agencies. For this reason, we are requesting that each Offeror indicate the discount in fees that they would provide should the Offeror be awarded a contract by both the ERS and the EUTF as a result of this EOI. Each agency will independently evaluate the proposals received, and each agency will award a separate contract to the successful Offeror. If an award is made, separate contracts will be issued by the ERS and the EUTF.

The ERS administers a defined benefit retirement plan for the State and county government employees of the State of Hawaii. As of April 2015, there were over 75,000 active and inactive vested members, plus over 46,000 retirees and beneficiaries. The number of retirees and beneficiaries that receive ERS pension payments is expected to increase from 1,000 to 2,000 annually. Please refer to ERS Consolidated Banking Fees Proforma (Attachment 1A/1B) for ERS' estimated transaction information.

The EUTF administers health and other benefit plans for State and county employees, retirees, and their dependents. The benefit plans include medical, prescription drug, dental, vision, chiropractic, and life insurance. The EUTF currently provides benefit plans to over 113,000 subscribers which include employees and retirees. When dependents are included, the participant count is approximately 199,000.

Significant dates

The significant dates present the ERS/EUTF's best estimate of the anticipated schedule of events. If a component of this schedule is delayed, the rest of the schedule will likely be shifted by the same number of days.

The following schedule sets forth the significant dates and deadlines applicable to this solicitation. The dates are merely estimates and not binding on the State. Nevertheless, by submitting its proposal, each Offeror: a) agrees to complete its proposal in compliance with the dates and deadlines set forth in the following schedule, unless the ERS/EUTF expressly agrees to

modify such schedule; and b) represents and warrants to the ERS/EUTF that such Offeror has the ability to comply with such schedule.

Solicitation release date	June 2, 2016
Due date to submit written questions	June 9, 2016
Response to written questions distributed	June 14, 2016
Proposals due	June 23, 2016 4:30 PM, HST
Notice of award	July 27, 2016

Issuing Office and Contact Persons

This solicitation is jointly issued by the ERS and the EUTF.

The ERS contact person for this solicitation is as follows:

Cara Sakata, Procurement Specialist
201 Merchant Street, Suite 1400
Honolulu, HI 96813
Telephone: 808-586-1776
Fax: 808-587-5766
Email: dbf.ers.procure@hawaii.gov

The EUTF contact person for this solicitation is as follows:

Donna Tonaki, Assistant Administrator
201 Merchant Street, Suite 1700
Honolulu, HI 96813
Telephone: 808-586-7390
Fax: 808-586-2320
Email: eutfadmin@hawaii.gov

Submission of Proposals

Proposals are due to the ERS and EUTF on June 23, 2016, 4:30 PM, HST. To submit proposals Offerors shall submit one (1) original and eight (8) copies of the proposal to the ERS and one (1) original and eight (8) copies of the proposal to the EUTF at the following addresses:

ERS
201 Merchant Street, Suite 1400
Honolulu, HI 96813

EUTF
201 Merchant Street, Suite 1700
Honolulu, HI 96813

Proposals received after June 23, 2016 4:30 PM, HST will not be accepted.

Contract Term

We intend to execute a three (3) year contract, with the option to renew for two (2) periods not to exceed two (2) years each, on the same terms and at the same price as the original contract.

Questions and Answers Prior to Opening of Proposals

All questions concerning this solicitation shall be submitted in writing to the respective contact person by June 9, 2016, 4:30 PM, HST. No telephone calls will be accepted. To facilitate a meaningful response, written questions shall reference the page(s), paragraph(s), and line(s) or sentence(s) to which the question relates. The ERS/EUTF will respond to the questions received by June 14, 2016, through the issuance of addendum to this solicitation.

Cancellation of Solicitation and Proposal Rejection

The ERS and the EUTF reserve the right to cancel this solicitation and to reject any and all proposals in whole or in part when it is determined to be in the best interest of the ERS and the EUTF. The ERS and the EUTF shall not be liable for any costs, expenses, loss of profits or damages whatsoever incurred by the offeror in the event this solicitation is cancelled or a proposal is rejected. The ERS and the EUTF are in no way obligated to award a contract in connection with this solicitation.

Responsibility of Offerors

Offerors are advised that in order to be awarded a contract under this solicitation, the Offerors will be required to be compliant with the following chapters of HRS pursuant to HRS §103D-310(c) upon award of a contract:

Chapter 237, General Excise Tax Law;

Chapter 383, Hawaii Employment Security Law;

Chapter 386, Worker's Compensation Law;

Chapter 392, Temporary Disability Insurance;

Chapter 393, Prepaid Health Care Act; and

§103D-310(c), Certificate of Good Standing (COGS) for entities doing business in the State.

If the Offeror is not compliant with the above HRS chapters at the time of award, the Offeror will not receive the award. To demonstrate compliance, Offerors are encouraged to subscribe to Hawaii Compliance Express (HCE). Offerors who do not participate in HCE may submit paper compliance certificates to the ERS/EUTF.

The HCE is an electronic system that allows vendors/contractors/service providers doing business with the State to quickly and easily demonstrate compliance with applicable laws. It is an online system that replaces the necessity of obtaining paper compliance certificates from the Department of Taxation, Federal Internal Revenue Service; Department of Labor and Industrial Relations, and Department of Commerce and Consumer Affairs.

Offerors who are interested in registering in HCE should do so prior to submitting an offer at https://vendors.ehawaii.gov. The annual registration fee is currently $12.00 and the 'Certificate of Vendor Compliance' is accepted for the execution of contract and final payment.

Proposal Preparation Costs

Any and all costs incurred by the Offeror in preparing or submitting a proposal shall be the Offeror's sole responsibility, whether or not any award results from this solicitation. The ERS and the EUTF shall not reimburse such costs.

Insurance Requirements

The contractor shall maintain in full force and effect during the life of this agreement, commercial general liability, automobile liability, and commercial crime insurance with the limits specified below.

Coverage	Limits
Commercial General Liability	$1,000,000 per occurrence for bodily injury and property damage; $1,000,000 per occurrence for personal and advertising injury; policy includes products completed/operations with an aggregated limit of $2,000,000.
Automobile Liability	$1,000,000 for bodily injury for each person; $1,000,000 for bodily injury for each accident; and $1,000,000 property damage for each accident.
Commercial Crime	$1,000,000 third party liability coverage

The Commercial General Liability and Automobile Liability insurance policies required of the selected bank, including any subcontractor's policy, shall contain the following clauses:

1. "This insurance shall not be canceled, limited in scope of coverage or non-renewed until after 30 days written notice has been given to the Employees' Retirement System, 201 Merchant Street, Suite 1400, Honolulu, Hawaii 96813/Hawaii Employer-Union Health Benefits Trust Fund, 201 Merchant Street, Suite 1700, Honolulu, Hawaii 96813."

2. "The State of Hawaii, the ERS/EUTF, and the ERS Board of Trustees /EUTF Board of Trustees are added as an additional insured as respects to operations performed for the State of Hawaii."

3. "It is agreed that any insurance maintained by the State of Hawaii and/or the ERS/EUTF will apply in excess of, and not contribute with, insurance provided by this policy." The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire selection term, including all extended periods if exercised. The Contractor agrees to deposit with the ERS/EUTF certificate(s) of insurance necessary to satisfy the ERS/EUTF that the insurance provisions of this agreement have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the ERS/EUTF during the entire term of this agreement, including those of its subcontractor(s), where appropriate. Upon request by the ERS/EUTF, 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 agreement, entitling the State to exercise any or all of the remedies provided in this agreement for a default of the Contractor.

The procuring of such required insurance shall not be construed to limit Contractor liability hereunder nor to fulfill the indemnification provisions and requirements of this agreement. 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 agreement.

Award of Contract

If an award is made, the successful Offeror will be required to enter into a formal written contract with the ERS/EUTF. Separate contracts will be issued by each agency. See sample contract in Attachment 4, Contract Form and General Conditions.

Business Associate Agreement

The contractor will have access to protected health information and personal information maintained by the EUTF. Thus, the Offeror selected by the EUTF for an award of contract shall be required to enter into a business associate agreement with the EUTF. See Attachment 5, EUTF Business Associate Agreement.

SCOPE OF WORK: ERS

We deposit and disburse over $2.3 billion annually through our demand accounts. The majority of which is to finance the issuance of pensions. Monthly expenditures are in excess of $100 million to over 46,000 retirees and beneficiaries.

Our operations are expected to require the following demand accounts:

Consolidated in account analysis:

1. Operations Account
2. Pension Receipts Account
3. Pension Disbursements Account

The ERS' Operations Account is used for deposit, investment, disbursement and money transfer activities. The Pension Receipts Account is used for deposits and money transfer activities only. The Pension Disbursements Account is used to disburse pension payments, refunds to members, and tax payments to the federal government

Additional demand accounts may be requested in the future dependent upon operational need. A money market or Investment (STIF) account may be requested dependent upon the interest rate environment and need to invest excess short-term funds in order to earn a higher interest rate than the demand deposit accounts.

SCOPE OF WORK: EUTF

The EUTF deposits and disburses approximately $1 billion annually. The majority of the monthly disbursements are approximately $86 million to carriers and approximately an additional $15.7 million quarterly (March, June, September, and December) or a total of $102.7 million for Medicare Part B reimbursement to retirees.

The EUTF currently has the following accounts:

Consolidated in account analysis:

1. ACH Account
2. Administrative Account
3. Carrier Account
4. Lockbox Account

The ACH account is used for disbursement of ACH credit transactions for Medicare Part B reimbursements to retirees. There is an automatic transfer from the carrier account to fund these disbursements. This is a zero balance account.

The Administrative account is used for deposits and disbursement of administrative operating expenses. Funds are transferred from the carrier account to fund the disbursements.

The Carrier account is used for deposit of employer and employee contributions, rebates, subsidies and surpluses from carriers; and disbursement of carrier premium payments and refunds to members.

The Lockbox account is used for deposit of members' health benefit premium payments. There is a daily automatic transfer to the carrier account. This is a zero balance account.

FORMAT OF RESPONSE

We are seeking responses to this request for banking services to improve our operating efficiencies and cost effectiveness. While the format of your response must be consistent with the requirements of this expression of interest, if you believe there is additional information that would be beneficial to us, we invite you to include it in your response.

Proposals submitted to the ERS and the EUTF shall include a response to each of the categories noted below.

Corporate Overview– ERS and EUTF: Provide a corporate overview of your bank. Identify the number of branches within the City & County of Honolulu, and the nearest full service branch that can assist us with our immediate banking needs. The bank must have a full service branch in the central business district/downtown area of the City & County of Honolulu.

Identify the number of branches on the islands of Hawaii, Kauai and Maui and the branch that is located near the county government fiscal office on the respective island (for ERS only):

County of Kauai
4444 Rice Street, Suite 280
Lihue, HI 96766

County of Maui
200 South High Street
Wailuku, HI 96793

County of Hawaii
25 Aupuni Street
Hilo, HI 96720

Experience: Describe the bank's experience in providing services to the public sector.

Financial Strength and Capitalization: Provide a summary of financial issues and capitalization requirements that has affected your bank since January 1, 2013. Include information on any federal or state subsidies, loans or investments received by your organization during this time and the current status, if applicable.

Relationship Management: Describe the relationship team who will be assigned to service the ERS and/or EUTF accounts. Describe individual roles, and responsibilities and briefly detail credentials and related banking experience. Identify a primary relationship manager who will serve as a central point of contact, understand the needs of the ERS/EUTF and be able to offer recommendations for service improvements. The relationship manager does not need to be the same for both the ERS and EUTF

FDIC Charges and Floats: Provide information on applicable FDIC charges from January 1, 2013 to date and the bank's availability schedule. Also present any float advantages being offered to ERS/EUTF that will cover our relationship with your bank.

ERS

1. **ERS - DISBURSEMENT SERVICES**

   a. Disbursement Processing: The bank must have the capability to process physical checks. Describe the bank's disbursement processing services, and the process or procedures available to help detect and prevent fraud from occurring against our bank accounts (i.e., fraudulent checks being mass processed against an account). Include your positive pay services including payee positive pay service (which is payee matching). Also discuss your stop payment services and requirements, and how it relates to the reconcilement process.

   b. Tax Payment Services: The bank must participate in the Electronic Federal Tax Payment System (EFTPS) provided by U.S. Department of Treasury. Describe the bank's services for federal tax payment processing including procedures, deadlines, reporting and reconciliation functions.

   c. Electronic Payment/Direct Deposit: The bank must have the capability to accommodate a wide range of electronic payment and deposit services. Direct deposit services are utilized for ERS' semi-monthly and monthly pension payrolls, and payment of administrative expenses. Almost all of the 46,000+ ERS pensioners take advantage of the direct deposit payment mechanism. Describe the bank's direct deposit services, and the process or procedures for returned deposits and debit adjustments (i.e., timeliness of adjustments).

      The ERS currently does not originate international ACH transactions (IAT) and does not intend to originate (IAT) in the near future.

   d. Daylight Overdraft Protection: Describe any issues, concerns and charges associated with the use of a daylight overdraft facility. In addition, discuss the bank's overdraft protection or credit facility to buffer the ERS as a preferred client from excessive per item charges incurred on overdrafts.

   e. Other Services: Describe the bank's death benefit restitution for overpayments, the bank's restitution for checks that clear the account after their void date, the bank's restitution for forged or altered checks, and the bank's stop payment process and restitution for checks that clear after the issuance of a stop payment request.

2. **ERS CASH MANAGEMENT**

a. Deposit Processing: Describe how the bank would accommodate the volume associated with our account. Include information on the bank's processing of returned and re-cleared items in this section. Describe the armored carrier service available for our use and the cut off times for armored car delivery ensuring the accounts are credited for our daily deposit. Our current liability amount is $500,000 and pick-up time is after 9:00 a.m., with the pick-up location at 201 Merchant Street, Suite 1400, Honolulu, HI.

b. Electronic Money Transfers: Describe the bank's incoming and outgoing electronic money transfer services. Include safeguards and security measures offered by your service, such as Automated Clearing House (ACH) blocking/filtering services.

c. Collected Balances and Earnings Allowance: Describe the bank's earnings calculations on collected balances and calculation of charges for funds advanced. Provide the rates used for the calculations, by month, from April 2014 to March 2016.

d. Overnight Sweep Account Facility: The ERS is limited to investments authorized by §88-119 of the Hawaii Revised Statutes, as amended. Describe the overnight sweep account offered by the bank. Also include other overnight investment options available to maximize our earnings potential. Please affirm that the investment options offered are authorized by and in compliance with §88-119. If proposing a pooled investment fund, please provide the investment prospectus for the pooled fund, including the monthly earnings rate by month from April 2014 to March 2016, and affirm that the individual securities in the pooled fund are in compliance with §88-119.

   - Note: The ERS is governed by Chapter 88, Hawaii Revised Statutes, as amended. Authorized investments are generally included in §88-119. This may be viewed on the Hawaii State Legislature's website at http://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0088/HRS_0088-0119.htm

e. Investment Services: Describe investment services offered by the bank. Exclude duplicate description of overnight Sweep Account capabilities in this section. Also elaborate if such investments are managed directly by employees of the bank, a subsidiary, or contracted with a third-party sub-adviser, and whether the investment managing entity is a registered advisor subject to the Investment Advisors Act of 1940.

f. Custody Services: Describe custody services offered by the bank to address State Treasury collateral requirements for securities invested, including system capabilities and standard reporting packages.

g. Deposit and Insurance Coverage: Describe how the ERS deposits are protected, including balances in excess of Federal Deposit Insurance Corporation ("FDIC") coverage and compliance with Chapter 38 – Deposit of Public Funds, Hawaii Revised Statutes, as amended. If applicable, this should include tri-party depository contracts that require that the custodian complies with collateral requirements.

h. Service Enhancements: Based upon information presented in your response and your bank's knowledge of the public sector, describe any enhancements, technological or otherwise, that we should consider to improve operational or cash management efficiencies.

3. ERS REPORTING AND OTHER

a. Account Reconcilement: The bank, at a minimum, must provide monthly account reconcilement reports, bank statements, account analysis statements, confirmations and other report related features. The bank should be able to provide various reports and statements, standard and specialized, in a computer media, via the internet if possible. Describe the account reconciliation service(s) offered by the bank, including how services may be differentiated between the accounts. Also describe the bank's check truncation services, including estimated savings if used.

b. Balance and Transaction Reporting: The bank must have an electronic communication and file transmission system to allow us to receive, no later than 5:30 a.m. Pacific Standard Time, previous day or preferably real time balance and transaction information for each designated account. We will use the internet product or a personal computer and modem to obtain a balance report each morning. The bank also must provide real time access for deposits, electronic payments, and transactions processed through the Automated Clearing House. Describe the balance reporting system offered by the bank, highlighting its features and ease of use.

c. Document Storage/Imaging: Describe the bank's services for document storage, imaging and retrieval of paper documents related to the ERS accounts (i.e., cancelled checks, deposit slips, credit memos, debit memos, statements, etc.). Include your on-line capabilities and record retention periods.

d. Online Services and Electronic Banking: Describe the bank's online banking product including services available online via the internet or modem, security features, set-up and maintenance of user accounts and user training. Describe how the ERS will conduct its banking business in case the internet product is not available.

e. File Transfers: Describe file transfers between ERS and your bank, including services available, security features, set-up and maintenance of these services.

f. Account Analysis: Describe your bank's services for account analysis processing, if applicable, and how it will impact the service and transaction fees paid on the ERS accounts.

g. Pricing Schedule: Provide, using the attached pro forma ERS Consolidated Banking Fees Proforma (Attachment 1A), the pricing for services proposed by the bank. Indicate the discount to fees and services that your bank would provide should both the ERS and the EUTF award you a contract (Attachment 1B). Include detailed breakdowns as support of the fee calculation and assumptions used for a specific line item, if applicable (i.e., ACH services or account analysis). The pro forma pricing should correspond to your pricing schedule and include all fees related to the pro forma pricing line item. Disclose any other costs that may be incurred by the ERS.

- Note: The daily balances in ERS' accounts will fluctuate based on the actual cash requirements for the accounts. Excess funds are transferred to ERS's custodial bank The Bank of New York Mellon. Cash balances will generally peak at the end of the month as member and employer contributions are received and month-end pension benefits are paid.

  ERS currently has over 46,000+ pensioners and beneficiaries, of which approximately 1,600+ are paid on the 15th of the month and 46,000+ are paid at the end of the month. Almost all of the pensioners and beneficiaries use direct deposit via the ACH services. Additional payments are processed 4 to 8 times per month (generally consisting of less than 50 payments) for refunds to terminated members; reissue of payments and the payment of administrative expenses. ERS issues approximately 315 checks each month or about 3,780 per year for all the bank accounts.

  For the Pension Disbursements Account, fluctuation in the daily cash balance will mainly occur in conjunction with our pension payroll and refund cycle. Pension payments are paid on the 15th and end of each calendar month, while refund payments may be processed weekly. Federal income taxes withheld from all payments is paid the next business day.

  The current recurring monthly pension payments paid by ACH debits on the last day of the month are in excess of $100 million and will continue to increase in correlation to the increase in the number of retirees. Currently about 88%-90% of this is paid by ACH and the remaining is for federal income taxes withheld and third party deductions issued as checks. In addition, ERS processes one-time payments that range from $1-$15 million depending on the number of new retirees. The semi-monthly pension payroll

and refund payments processed during the month are usually less than $1 million per payment date as a combination of ACH and checks.

Funding for payment of pension payroll will occur via ACH deposits, incoming wires, and physical check deposits from various State and County departments and/or ERS externally managed cash investments

The Pension Receipts account receives the majority of its funds on the State and County pay dates. Excess funds are transferred to ERS's custodial bank The Bank of New York Mellon as it becomes available. All are semi-repetitive; same receiving bank same beneficiary with different dollar amount.

Checks payable to ERS are not processed through the bank's lockbox services. ERS is requesting information on the type of lockbox service available. ERS has not implemented use of a lockbox in our current operations. This section is intended for informational gathering and fact finding should future implementation be needed during the contract term.

h. Conversion Plan: Describe the overall plan your bank would coordinate to ensure a smooth transition from the current provider. The bank must also provide on-site training to our personnel for the operation and use of the bank's services and automated system for all areas of service.

i. Lockbox Service for Payment Receipts: Describe the bank's services for receiving payments by mail on behalf of the ERS including, but not limited to, the procedures and processes for receiving the check, depositing the check, resolving discrepancies, accounting for and reporting of the transaction. Include any limitations regarding the bank's services.

j. Back Up Recovery: Describe the bank's services for continued pension payment processing should the ERS' computer system be inoperable for an extended period of time.

k. Transition Services: Contractor shall allow for a transition period to transition to a new banking services provider if necessary at the end of the contract term.

EUTF

1. EUTF - DISBURSEMENT SERVICES

a. Disbursement Processing: The bank must have the capability to process physical checks. The EUTF issues approximately 14 checks a month with an average monthly disbursement amount of $650,000.

In addition, the banks must be able to issue and mail checks for the EUTF. Currently, the EUTF sends the bank a check disbursement file via Secured Web Mailbox (SWMB). The EUTF issues quarterly (March, June, September, December) disbursement checks with a total of approximately 1,600 checks and a total amount of approximately $586,000 for Medicare Part B reimbursements. In addition, approximately 35 refunds with an average amount of $400 per check are issued to members by sending a check file semi-monthly to the bank to issue checks. See Attachment 7 for a sample check file layout.

Describe the bank's disbursement processing services, and the process or procedures available to help detect and prevent fraud from occurring against our bank accounts (i.e., fraudulent checks being mass processed against an account). Include your positive pay services including payee positive pay service (which is payee matching). Also discuss your stop payment services and requirements, and how it relates to the reconcilement process.

b. Electronic Payment/Direct Deposit: The bank must have the capability to have online ACH Module and ACH Direct send services. The following are the average frequency, number of monthly transactions and total monthly amount of ACH transactions that the EUTF disburses:

Frequency	# of Transactions	Total Amount
1. Quarterly	36,500	$15.7 Million
2. Monthly	50	$50,000
3. 15th	10	$81 Million
4. EOM	5	$5 Million

For #1 and #2, a file (NACHA format) is sent via SWMB to the bank to process the ACH disbursements from the EUTF to deposit into retirees or vendor bank accounts. For #3 and #4, payments are made via online service.

The EUTF would also like to implement ACH debit services to collect health benefit premium payments from retirees or employees bank accounts by sending a file (NACHA format) once a month to the bank via secure web access. The estimate amount of transactions would be approximately 1,000 per month.

Describe the bank's ACH debit and credit services which would include online as well as secure access and transfer of files, and the process or procedures for returned deposits and debit adjustments (i.e., timeliness of adjustments).

The EUTF currently does not originate international ACH transactions (IAT) and does not intend to originate (IAT) in the near future.

c. Daylight Overdraft Protection: Describe any issues, concerns and charges associated with the use of a daylight overdraft facility. In addition, discuss the bank's overdraft protection or credit facility to buffer the EUTF as a preferred client from excessive per item charges incurred on overdrafts.

d. Other Services: Describe the bank's death benefit restitution for overpayments, the bank's restitution for checks that clear the account after their void date, the bank's restitution for forged or altered checks, and the bank's stop payment process and restitution for checks that clear after the issuance of a stop payment request.

2. EUTF - CASH MANAGEMENT

a. Deposit Processing: The EUTF deposits checks at the bank that they do not receive through the lockbox. There are approximately 185 checks deposited in a month for a total of approximately $5 million. Describe the bank's deposit processing services and include information on the bank's processing of returned and re-cleared items in this section.

b. Lockbox Service for Payment Receipts: The EUTF currently uses retail image lockbox (coupon with OCR scanline). There are approximately 1,600 checks deposited in a month or 16,413 deposited yearly and a total of approximately $382,000 deposited into the lockbox monthly or approximately $4.5 million yearly. The EUTF receives a file daily from the bank and uploads the payment to the members account at the EUTF. See Attachment 6 lockbox file layout. Describe the bank's services for receiving payments by mail on behalf of the EUTF including, but not limited to, the procedures and processes for receiving the check, depositing the check, file transfer, resolving discrepancies, accounting for and reporting of the transaction. Include any limitations regarding the bank's services.

c. Credit Card Processing: The EUTF would like to explore options of accepting credit card payments from employees or retirees to pay for their health benefit premiums. The EUTF estimates that there would be approximately $1.7M annually in credit card payments with an average ticket of $285.00. Please describe options for accepting credit card payments.

d. Electronic Money Transfers: Describe the bank's incoming and outgoing electronic money transfer services. Include safeguards and security measures offered by your service, such as Automated Clearing House (ACH) blocking/filtering services.

e. Collected Balances and Earnings Allowance: Describe the bank's earnings calculations on collected balances and calculation of charges for funds advanced. Provide the rates used for the calculations, by month, from March 2015 through April 2016.

f. Overnight Sweep Account Facility: Describe the overnight sweep account offered by the bank. Also include other overnight investment options available to maximize our earnings potential. Please affirm that the investment options offered are authorized by and in compliance with §87A-24. If proposing a pooled investment fund, please provide the investment prospectus for the pooled fund, including the monthly earnings rate by month from March 2015 to April 2016, and affirm that the individual securities in the pooled fund are in compliance with §87A-24.

g. Investment Services: Describe investment services offered by the bank. Exclude duplicate description of overnight Sweep Account capabilities in this section. Also elaborate if such investments are managed directly by employees of the bank, a subsidiary, or contracted with a third-party sub-adviser, and whether the investment managing entity is a registered advisor subject to the Investment Advisors Act of 1940.

h. Custody Services: Describe custody services offered by the bank to address State Treasury collateral requirements for securities invested, including system capabilities and standard reporting packages.

i. Deposit and Insurance Coverage: Describe how the EUTF deposits are protected, including balances in excess of Federal Deposit Insurance Corporation ("FDIC") coverage and compliance with Chapter 38 – Deposit of Public Funds, Hawaii Revised Statutes, as amended. If applicable, this should include tri-party depository contracts that require that the custodian complies with collateral requirements.

j. Service Enhancements: Based upon information presented in your response and your bank's knowledge of the public sector, describe any enhancements, technological or otherwise, that we should consider to improve operational or cash management efficiencies.

3. EUTF - REPORTING AND OTHER

a. Account Reconcilement: The bank, at a minimum, must provide monthly account reconcilement reports, bank statements, account analysis statements, confirmations and other report related features. The bank should be able to provide various reports and statements, standard and specialized via online statement reporting and hard copy. Describe the full account reconciliation service(s) offered by the bank, including how services may be differentiated between the accounts. Also describe the bank's check truncation services, including estimated savings if used.

b. Balance and Transaction Reporting: The bank must have an electronic communication and file transmission system to allow us to receive, no later than 5:30 a.m. Pacific Standard Time, previous day or preferably real time balance and transaction information for each designated account. We will use the internet product or a personal computer to obtain a balance report each morning. The bank also must provide real time access for deposits, electronic payments, and transactions processed through the Automated Clearing House. Describe the balance and transaction reporting system offered by the bank, highlighting its features and ease of use.

c. Document Storage/Imaging: Describe the bank's services for document storage, imaging and retrieval of paper documents related to the EUTF accounts (i.e., cancelled checks, deposit slips, credit memos, debit memos, statements, etc.). Include your on-line capabilities and record retention periods.

d. Online Services and Electronic Banking: Describe the bank's online banking product including services available online via the internet, security features, set-up and maintenance of user accounts and user training. Describe how the EUTF will conduct its banking business in case the internet product is not available.

e. File Transfers: Describe file transfers between EUTF and your bank, including services available, security features, set-up and maintenance of these services.

f. Account Analysis: Describe your bank's services for account analysis processing, if applicable, and how it will impact the service and transaction fees paid on the EUTF accounts.

g. Concentration Services: The EUTF currently has multi linking accounts (zero balance accounts). These accounts are the ACH and Lockbox. Describe the bank's concentration services.

h. Pricing Schedule: Provide, using the attached pro forma EUTF Consolidated Banking Fees Proforma (Attachment 2A), the pricing for services proposed by the bank. Indicate the discount to fees and services that your bank would provide should both the ERS and the EUTF award you a contract (Attachment 2B). Include detailed breakdowns as support of the fee calculation and assumptions used for a specific line item, if applicable (i.e., ACH services or account analysis). The pro forma pricing should correspond to your pricing schedule and include all fees related to the pro forma pricing line item. Disclose any other costs that may be incurred by the EUTF.

i. Conversion Plan: Describe the overall plan and time table your bank would coordinate to ensure a smooth transition from the current provider. For illustrative purposes, the contract start date would be August 1, 2016. The bank must also provide on-site training to our personnel for the operation and use of the bank's services and automated system for all areas of service.

j. Transition Services: Contractor shall allow for a transition period to transition to a new banking services provider if necessary at the end of the contract term.

EXHIBITS TO BE INCLUDED IN RESPONSE FOR ERS AND EUTF

Offeror shall append the proposal with the following exhibits:

Exhibit I – Authorization to Contract. Provide pages as necessary. Provide either an excerpt from your Corporate Resolution, Certificate of Secretary, or correspondence from the Chief Executive Officer or chairperson attesting that the individual signing the response has the authority to make binding representations on behalf of the bank.

Exhibit II – Authorization to Do Business in Hawaii. Provide pages a necessary. Provide evidence that you are authorized to do business in the State of Hawaii.

Exhibit III – Financial Statements and Ratings. Provide pages as necessary. Provide the most recent audited financial statements, or annual report for the bank. Also include your most current Standard & Poor's and Moody's credit ratings.

Exhibit IV– Account Analysis. Provide pages as necessary. Provide a sample of your bank's account analysis and a user guide for the account analysis.

Exhibit V – Disaster Awareness Recovery Program. Provide details of your institution's disaster procedures for recovery of ERS records and information.

Exhibit VI – Identity Protection. Provide details of your safeguard methods in the handling of our records and social security numbers.

Exhibit VII – Closing Agreement. Detail the process and timeline for the transition period upon termination of the contract. For illustration purposes, please use a transition date of June 30, 2019.

Exhibit VIII – Proforma Pricing. ERS (Attachment 1A/1B) and EUTF (Attachment 2A/2B) Consolidated Banking Fees.

Exhibit IX –Fee Schedule. Include all the fees that are applicable to ERS and EUTF during the proposed contract term for banking services described in this EOI. For example, while ERS does not presently use positive pay for ERS checks issued, ERS is planning to implement this service during the contract term and while EUTF does not presently use ACH debit services, EUTF is planning to implement this service.

Exhibit XI – ERS and EUTF Contract – Provide any exception(s) to the standard State of Hawaii contract (Attachment 4) issued by the ERS and EUTF that you want considered if awarded the banking services for ERS and EUTF.

Exhibit XII – EUTF Business Associate Agreement – Provide any exception(s) to the standard Business Associate Agreement (Attachment 5) issued by the EUTF that you want considered if awarded banking services for EUTF.

Exhibit XIII – Minimum Qualifications Certification (Attachment 3) –Confirm that your firm meets each of the minimum qualifications as noted in Attachment 3.

EVALUATION CRITERIA AND SELECTION OF CONTRACTOR

Evaluation of the proposals shall be within the sole judgment and discretion of each selection committee that will be responsible for reviewing, evaluating, and ranking all of the proposals submitted. The ERS selection committee shall evaluate proposals submitted to the ERS, and the EUTF selection committee shall evaluate proposals submitted to the EUTF. The ERS and the EUTF will utilize the minimum qualifications criteria noted below, however, each agency shall have its own evaluation criteria.

The ERS and the EUTF reserve the right to: 1) not award a contract at all; 2) award a contract to different banking services providers; and 3) award a contract to the same banking services provider.

If an award is made, separate contracts will be issued by the ERS and the EUTF.

Minimum Qualifications

To be considered for selection, responding banks shall meet the following qualifications:

1. Be a State of Hawaii chartered or federally chartered financial institution.
2. Be a qualified depository for public funds.
3. Be a full service commercial bank in good standing among other comparable banks.
4. Be capable of providing the services sought by the agency.
5. Have established offices within downtown Honolulu.
6. Have branches able to accept physical deposits on the islands of Hawaii, Kauai and Maui (minimum qualification only for ERS).
7. Agree to maintain a consistent service team throughout the term of the contract and assign experienced and dedicated staff members who are committed and capable of servicing our accounts.
8. Be sufficiently capitalized to accommodate our cash and investment management needs.
9. Be insured by FDIC.

All proposals that meet the above minimum qualifications will be considered by the ERS and EUTF selection committees.

In evaluating the proposals for EUTF, the EUTF selection committee shall score each proposal according to the following criteria/categories:

EUTF Evaluation Criteria/Categories

1. Services offered – Assessment of each offeror's ability to provide the services relevant to the scope of work in the EOI – 45 points

2. Qualifications and Experience – Experience and professional qualification relevant to the scope of work in the EOI – 40 points

3. Fees – 15 points

LIST OF ATTACHMENTS

Attachment 1A/1B: ERS Consolidated Banking Fees Proforma
Attachment 2A/2B: EUTF Consolidated Banking Fees Proforma
Attachment 3: Minimum Qualifications Certification
Attachment 4: Contract Form
Attachment 5: EUTF Business Associate Agreement (BAA)
Attachment 6: EUTF Lockbox File Layout
Attachment 7: EUTF Sample Check File Layout

Employees' Retirement System of the State of Hawaii
Attachment 1A- ERS Consolidated Banking Fees Proforma

The fees on this form shall be guaranteed for a period of 7 years from the effective date of the contract. Fees shall include taxes and all expenses that will be incurred in providing the services specified in this solicitation.

Annual Checking Account Balance Summary	Monthly	Annual Volume	Unit Cost	Annual Cost
Average Ledger Balance - Average Daily		$ 9,000,000		
Less Average Uncolllected Balance		1,500,000		
Average Collected Balance		$ 7,500,000		
Annual Earnings Credit and Profitability Calculation				
Annual Service Charges				
Account Maintenance	3 accounts	36		
Additional Checking Statements	2 per month	24		
FDIC Assessment				
Deposit Services				
Customer Deposits Received	30 per month	360		
Cash Deposited ($1,000s)	1	12		
Currency Ordered ($1,000s)	0	0		
Checks Deposited on ERS Bank	20	240		
Checks Deposited - Local Banks	40	480		
Checkd Deposited - Other Banks	20	240		
Return Items Charged Back	2	24		
Incoming Wire Transfers	10	120		
Incoming Wire Transfers - email notification	10	120		
Incoming ACH payment	20	240		
Incoming ACH payment - email notification	20	240		
Account to Account Transfers	5	60		
Outgoing Wires	5	60		
ACH Services				
Debit Blocking	3 accounts	36		
Files transmitted	15	180		
ACH Transactions (Total for all files)	48,000	576,000		
Transaction Recall	10	120		
ACH Nofication of Change	20	240		
ACH Returned Items	30	360		
Check Services				
Stop Payment Service	5	60		
Checks Paid	315	3,780		
Account Reconciliation Service				
Provide estimate for each level of service				
- Partial Reconcilation	None			
- Full Reconciliation	None			
- Positive Pay on checks	315	3,780		
- Accounts on Positive Pay	2	24		
Online Banking Service Fees	Daily use	12		
Provide detailed calculation				

Employees' Retirement System of the State of Hawaii
Attachment 1A- ERS Consolidated Banking Fees Proforma

Tax Payment Service	6	72			
Imaging Services based on above transactions	monthly				
(315 checks, 100 other items, 3 statements)					
Total					
Online Cash Management Services					
Balance and Transaction Items Loaded					
Software License		8 users			
Each Additional License					
Installation/Training					
Service Calls					
Base Fee (Per PC Site)					
Minimum Monthly Fee					
Check Management (module fee, stop payments, photo copies, check inquiries)					
Setup New Users		2			
Reset Passwords		2			
Audit Confirmation Request Fee	2 per account	6			
Total					

Employees' Retirement System of the State of Hawaii
Attachment 1B - ERS Consolidated Banking Fees Proforma

Indicate discount to the fee schedule if this solicitation results in contractor being awarded one contract from the ERS and one contract from the EUTF.

Annual Checking Account Balance Summary	Monthly	Annual Volume	Unit Cost	Annual Cost
Average Ledger Balance - Average Daily		$ 9,000,000		
Less Average Uncolllected Balance		1,500,000		
Average Collected Balance		$ 7,500,000		
Annual Earnings Credit and Profitability Calculation				
Annual Service Charges				
Account Maintenance	3 accounts	36		
Additional Checking Statements	2 per month	24		
FDIC Assessment				
Deposit Services				
Customer Deposits Received	30 per month	360		
Cash Deposited ($1,000s)	1	12		
Currency Ordered ($1,000s)	0	0		
Checks Deposited on ERS Bank	20	240		
Checks Deposited - Local Banks	40	480		
Checkd Deposited - Other Banks	20	240		
Return Items Charged Back	2	24		
Incoming Wire Transfers	10	120		
Incoming Wire Transfers - email notification	10	120		
Incoming ACH payment	20	240		
Incoming ACH payment - email notification	20	240		
Account to Account Transfers	5	60		
Outgoing Wires	5	60		
ACH Services				
Debit Blocking	3 accounts	36		
Files transmitted	15	180		
ACH Transactions (Total for all files)	48,000	576,000		
Transaction Recall	10	120		
ACH Nofication of Change	20	240		
ACH Returned Items	30	360		
Check Services				
Stop Payment Service	5	60		
Checks Paid	315	3,780		
Account Reconciliation Service				
Provide estimate for each level of service				
- Partial Reconcilation	None			
- Full Reconciliation	None			
- Positive Pay on checks	315	3,780		
- Accounts on Positive Pay	2	24		
Online Banking Service Fees	Daily use	12		

Employees' Retirement System of the State of Hawaii
Attachment 1B - ERS Consolidated Banking Fees Proforma

Provide detailed calculation				
Tax Payment Service	6	72		
Imaging Services based on above transactions	monthly			
(315 checks, 100 other items, 3 statements)				
Total				
Online Cash Management Services				
Balance and Transaction Items Loaded				
Software License		8 users		
Each Additional License				
Installation/Training				
Service Calls				
Base Fee (Per PC Site)				
Minimum Monthly Fee				
Check Management (module fee, stop payments, photo copies, check inquiries)				
Setup New Users		2		
Reset Passwords		2		
Audit Confirmation Request Fee	2 per account	6		
Total				

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
ATTACHMENT 2A - EUTF CONSOLIDATED BANKING FEES PROFORMA

The fees on this form shall be guranteed for a period of 7 years from the effective date of the contract. Fees shall include taxes and all expenses that will be incurred in providing the services specified in this solicitation.

Annual Checking Account Balance Summary	Annual Volume	Average Monthly	Unit Cost	Annual Cost
Average Ledger Balance	$ 531,363,487	$ 44,280,291		
Less Average Uncolllected Balance	$ 1,328,572	$ 110,714		
Average Collected Balance	$ 530,034,916	$ 44,169,576		
Annual Earnings Credit and Profitability Calculation				
Annual Service Charges				
Checks Paid Safekeeping	9,992	833		
Interest on Funds Advanced Charge	$ 694.81	58		
Account Maintenance	48	4		
Deposit Services				
Customer Deposits Received	296	25		
Checks Deposited Over the Counter				
On EUTF Bank	429	36		
Local Banks	1,265	105		
Other Banks	514	43		
Checks Returned Items Charge Back	6	1		
Lockbox Checks Deposited				
Lockbox Customer Deposits Received	250	21		
Deposited on EUTF Bank	2,598	217		
Deposited Over the Counter - Local Banks	10,711	893		
Deposited Over the Counter - Other Banks	3,104	259		
Lockbox Checks Returned Items Charge Back	36	3		
Wire Transfer Service				
Incoming Wire Transfers - No Notification	38	3		
Cash Management Services				
Account Reconciliation Service				
Full Reconciliation				
Full Recon Base Fee (Per Cycle)		1		
Full Recon Paid Check	9,845	820		
Full Recon Issue File Processing		1		
Full Recon Check Issues and Voids	10,797	900		
Full Recon Premium Reports		1		
Full Recon Online Service Positive Pay Module		1		
Full Recon Positive Pay Exceptions	64	5		
Full Recon Special Report	714	60		
ACH Services				
Monthly ACH Maintenance		1		
Debit Block - Monthly Maintenance	48	4		
File Process Fee - Transmission	79	7		
ACH Transactions (Total for all files)	141,479	11,790		
ACH Nofication of Change	354	30		

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
ATTACHMENT 2A - EUTF CONSOLIDATED BANKING FEES PROFORMA

ACH Returned Items	500	42		
Online Service				
Online Users		4		
BAI2 Export		1		
ACH Service		1		
Monthly Online Maintenance Fee	12	1		
Positive Pay Exception Processing		1		
CheckService Account Activity		13		
Online Service Prior				
Items Loaded-Prior Day	44,801	3733		
Stop Payment - Check Management	23	2		
Concentration Services				
Primary		1		
Sub Account		2		
Lockbox Services		1		
Imaging Service	10,567	881		
CD-Rom		1		
Check Disbursement Services	9,758	813		
Miscellaneous				
Multiple Period Settlement Fee		1		
Audit Confirmation				
Deposit Administration				
Deposit Administration Fee	$ 531,362	$ 44,280		
ACH Services Provided				
ACH Credit	472	39		
Other Costs				
Total				

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
ATTACHMENT 2B - EUTF CONSOLIDATED BANKING FEES PROFORMA

Indicate discount to the fee schedule if this solicitation results in contractor being awarded one contract from the ERS and one contract from the EUTF

Annual Checking Account Balance Summary	Annual Volume	Average Monthly	Unit Cost	Annual Cost
Average Ledger Balance	$ 531,363,487	$ 44,280,291		
Less Average Uncolllected Balance	$ 1,328,572	$ 110,714		
Average Collected Balance	$ 530,034,916	$ 44,169,576		
Annual Earnings Credit and Profitability Calculation				
Annual Service Charges				
Checks Paid Safekeeping	9,992	833		
Interest on Funds Advanced Charge	$ 694.81	58		
Account Maintenance	48	4		
Deposit Services				
Customer Deposits Received	296	25		
Checks Deposited Over the Counter				
On EUTF Bank	429	36		
Local Banks	1,265	105		
Other Banks	514	43		
Checks Returned Items Charge Back	6	1		
Lockbox Checks Deposited				
Lockbox Customer Deposits Received	250	21		
Deposited on EUTF Bank	2,598	217		
Deposited Over the Counter - Local Banks	10,711	893		
Deposited Over the Counter - Other Banks	3,104	259		
Lockbox Checks Returned Items Charge Back	36	3		
Wire Transfer Service				
Incoming Wire Transfers - No Notification	38	3		
Cash Management Services				
Account Reconciliation Service				
Full Reconciliation				
Full Recon Base Fee (Per Cycle)		1		
Full Recon Paid Check	9,845	820		
Full Recon Issue File Processing		1		
Full Recon Check Issues and Voids	10,797	900		
Full Recon Premium Reports		1		
Full Recon Online Service Positive Pay Module		1		
Full Recon Positive Pay Exceptions	64	5		
Full Recon Special Report	714	60		
ACH Services				
Monthly ACH Maintenance		1		
Debit Block - Monthly Maintenance	48	4		
File Process Fee - Transmission	79	7		
ACH Transactions (Total for all files)	141,479	11,790		
ACH Nofication of Change	354	30		

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
ATTACHMENT 2B - EUTF CONSOLIDATED BANKING FEES PROFORMA

ACH Returned Items	500	42		
Online Service				
Online Users		4		
BAI2 Export		1		
ACH Service		1		
Monthly Online Maintenance Fee	12	1		
Positive Pay Exception Processing		1		
CheckService Account Activity		13		
Online Service Prior				
Items Loaded-Prior Day	44,801	3733		
Stop Payment - Check Management	23	2		
Concentration Services				
Primary		1		
Sub Account		2		
Lockbox Services		1		
Imaging Service	10,567	881		
CD-Rom		1		
Check Disbursement Services	9,758	813		
Miscellaneous				
Multiple Period Settlement Fee		1		
Audit Confirmation				
Deposit Administration				
Deposit Administration Fee	$ 531,362	$ 44,280		
ACH Services Provided				
ACH Credit	472	39		
Other Costs				
Total				

Attachment 3

Mandatory Requirements Certification

Request for Expression of Interest: Banking Services

The undersigned Offeror hereby represents and warrants to the Employees' Retirement System and to the Hawaii Employer-Union Health Benefits Trust Fund as follows:

1. Offeror is a State of Hawaii chartered or federally chartered financial institution.

2. Offeror is a qualified depository for public funds.

3. Offeror is a full service commercial bank in good standing among other comparable banks.

4. Offeror is capable of providing the services sought by the agency.

5. Offeror has established offices within downtown Honolulu.

6. Offeror has branches able to accept physical deposits on the islands of Hawaii, Kauai and Maui (minimum qualification only for ERS).

7. Offeror agrees to maintain a consistent service team throughout the term of the contract and assign experienced and dedicated staff members who are committed and capable of servicing our accounts.

8. Offeror is sufficiently capitalized to accommodate our cash and investment management needs.

9. Offeror is insured by FDIC.

Offeror's Name: _____

Signed: _____ Date: _____

STATE OF HAWAII

CONTRACT FOR GOODS OR SERVICES BASED UPON COMPETITIVE SEALED PROPOSALS

This Contract, executed on the respective dates indicated below, is effective as of _____, _____, between _____,
(Insert name of state department, agency, board or commission)
State of Hawaii ("STATE"), by its _____,
(Insert title of person signing for State)
(hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")), whose address is _____
_____ and _____
("CONTRACTOR"), a _____
(Insert corporation, partnership, joint venture, sole proprietorship. or other legal form of the Contractor)
under the laws of the State of _____, whose business address and federal and state taxpayer identification numbers are as follows: _____
_____

RECITALS

A. The STATE desires to retain and engage the CONTRACTOR to provide the goods or services, or both, described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said goods or services or both.

B. The STATE has issued a request for competitive sealed proposals, and has received and reviewed proposals submitted in response to the request.

C. The solicitation for proposals and the selection of the CONTRACTOR were made in accordance with section 103D-303, Hawaii Revised Statutes ("HRS"), Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Subtitle 11 ("HAR"), Chapter 122, Subchapter 6, and applicable procedures established by the appropriate Chief Procurement Officer ("CPO").

D. The CONTRACTOR has been identified as the responsible and responsive offeror whose proposal is the most advantageous for the STATE, taking into consideration price and the evaluation factors set forth in the request.

E. Pursuant to _____, the STATE
(Legal authority to enter into this Contract)
is authorized to enter into this Contract.

F. Money is available to fund this Contract pursuant to:
(1) _____
(Identify state sources)
or (2) _____
(Identify federal sources)
or both, in the following amounts: State $ _____
Federal $ _____

NOW, THEREFORE, in consideration of the promises contained in this Contract, the STATE and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the goods or services, or both, set forth in the request for competitive sealed proposals number _____ ("RFP") and the CONTRACTOR'S accepted proposal ("Proposal"), both of which, even if not physically attached to this Contract, are made a part of this Contract.

2. Compensation. The CONTRACTOR shall be compensated for goods supplied

or services performed, or both, under this Contract in a total amount not to exceed _____ DOLLARS ($ _____), including approved costs incurred and taxes, at the time and in the manner set forth in the RFP and CONTRACTOR'S Proposal.

3. Time of Performance. The services or goods required of the CONTRACTOR under this Contract shall be performed and completed in accordance with the Time of Performance set forth in Attachment-S3, which is made a part of this Contract.

4. Bonds. The CONTRACTOR ☐ is required to provide or ☐ is not required to provide: ☐ a performance bond, ☐ a payment bond, ☐ a performance and payment bond in the amount of _____ DOLLARS ($ _____).

5. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR is attached to and made a part of this Contract.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made a part of this Contract. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. In the event of a conflict among the documents, the order of precedence shall be as follows: (1) this Contract, including all attachments and addenda; (2) the RFP, including all attachments and addenda; and (3) the Proposal.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of _____ DOLLARS ($ _____) per day, in accordance with the terms of paragraph 9 of the General Conditions.

8. Notices. Any written notice required to be given by a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the STATE shall be sent to the HOPA'S address indicated in the Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address indicated in the Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the STATE in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Contract by their signatures, on the dates below, to be effective as of the date first above written.

STATE

_____
(Signature)

_____
(Print Name)

_____
(Print Title)

_____
(Date)

CONTRACTOR

CORPORATE SEAL
(If available)

_____
(Name of Contractor)

_____
(Signature)

_____
(Print Name)

_____ *
(Print Title)

_____
(Date)

APPROVED AS TO FORM:

_____
Deputy Attorney General

* Evidence of authority of the CONTRACTOR'S representative to sign this Contract for the CONTRACTOR must be attached.

STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF _____)
) **SS.**
_____ **COUNTY OF** _____)

On this _____ day of _____, _____ before me appeared _____ and _____, to me known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are _____ and _____ of _____, the CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said instrument as the free act and deed of the CONTRACTOR.

(Notary Stamp or Seal)

_____
(Signature)

_____
(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ _____ Circuit

Doc. Description: _____

_____

_____

(Notary Stamp or Seal)

_____
Notary Signature Date

NOTARY CERTIFICATION

STATE OF HAWAII

CONTRACTOR'S STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

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

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

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

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

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

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

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

CONTRACTOR

By _____
(Signature)

Print Name _____

Print Title _____

Name of Contractor _____

Date _____

Attachment - S1

STATE OF HAWAII

SCOPE OF SERVICES

Attachment – S2

STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

Attachment – S3

STATE OF HAWAII

TIME OF PERFORMANCE

Attachment – S4

STATE OF HAWAII

CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development ("DHRD").*

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).

(Signature) (Date)

(Print Name)

(Print Title)

* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

(1) It involves the delivery of completed work or product by or during a specific time;
(2) There is no employee-employer relationship; and
(3) The authorized funding for the service is from other than the "A" or personal services cost element.

NOTE: Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and
76-16(b)(12) exemptions.

2. By the Director of DHRD, State of Hawaii.

I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to §76-16, HRS.

(Signature) (Date)

(Print Name)

(Print Title, if designee of the Director of DHRD)

GENERAL CONDITIONS

Table of Contents

Page(s)

1. Coordination of Services by the STATE 2
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities 2
3. Personnel Requirements 3
4. Nondiscrimination 3
5. Conflicts of Interest 3
6. Subcontracts and Assignments 3
7. Indemnification and Defense 4
8. Cost of Litigation 4
9. Liquidated Damages 4
10. STATE'S Right of Offset 4
11. Disputes 4
12. Suspension of Contract 4
13. Termination for Default 5
14. Termination for Convenience 6
15. Claims Based on the Agency Procurement Officer’s Actions or Omissions 8
16. Costs and Expenses 8
17. Payment Procedures; Final Payment; Tax Clearance 9
18. Federal Funds 9
19. Modifications of Contract 9
20. Change Order 10
21. Price Adjustment 11
22. Variation in Quantity for Definite Quantity Contracts 11
23. Changes in Cost-Reimbursement Contract 11
24. Confidentiality of Material 12
25. Publicity 12
26. Ownership Rights and Copyright 12
27. Liens and Warranties 12
28. Audit of Books and Records of the CONTRACTOR 13
29. Cost or Pricing Data 13
30. Audit of Cost or Pricing Data 13
31. Records Retention 13
32. Antitrust Claims 13
33. Patented Articles. 13
34. Governing Law 14
35. Compliance with Laws 14
36. Conflict between General Conditions and Procurement Rules 14
37. Entire Contract 14
38. Severability 14
39. Waiver 14
40. Pollution Control 14
41. Campaign Contributions 14
42. Confidentiality of Personal Information 14

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 section103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.

h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.

i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.

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

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

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

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

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

(1) The Assignee assumes all of the CONTRACTOR'S obligations;

(2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and

(3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

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

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

c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.

d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.

7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.

8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.

9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.

10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.

11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.

12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

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

(1) Cancel the stop performance order; or

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

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

(1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and

(2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

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

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

13. Termination for Default.

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

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

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

c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.

d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.

e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.

f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.

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

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

(1) Any completed goods or work product; and

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

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

d. Compensation.

(1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.

(2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.

(3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:

(A) Contract prices for goods or services accepted under the Contract;

(B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);

(D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.

b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.

c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.

b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.

c. Prompt payment.

(1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and

(2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

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

19. Modifications of Contract.

a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.

b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:

(A) Changes in the work within the scope of the Contract; and

(B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.

d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.

e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.

f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.

g. Head of the purchasing agency approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least $25,000.00 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.

h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.

i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.

20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:

(1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;

(2) Method of delivery; or

(3) Place of delivery.

a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

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

b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.

c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.

d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:

(1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(2) By unit prices specified in the Contract or subsequently agreed upon;

(3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;

(4) In such other manner as the parties may mutually agree; or

(5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.

b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

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

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

a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:

(1) Description of performance (Attachment 1);

(2) Time of performance (i.e., hours of the day, days of the week, etc.);

(3) Place of performance of services;

(4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;

(5) Method of shipment or packing of supplies; or

(6) Place of delivery.

b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.

c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.

d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.

e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.

24. Confidentiality of Material.

a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.

b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.

27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

    a. The cost or pricing data, and

    b. A state contract, including subcontracts, other than a firm fixed-price contract.

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

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

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

31. Records Retention.

    (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.

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

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

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

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.

36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.

37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.

38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.

39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.

40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.

41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.

42. Confidentiality of Personal Information.

a. Definitions.

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

(1) Social security number;

(2) Driver's license number or Hawaii identification card number; or

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

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

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

b. Confidentiality of Material.

(1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.

(2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.

(3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.

(4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.

(5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.

(6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

(1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.

(2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:

(A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;

(B) Access to the personal information will be allowed only as necessary to perform the Contract; and

(C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

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

(1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or

(2) Immediately terminate this Contract.

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

e. Records Retention.

(1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.

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

BUSINESS ASSOCIATE AGREEMENT

This Agreement, is effective as of _____, between the Hawai‘i Employer-Union Health Benefits Trust Fund, State of Hawai‘i (hereinafter the “STATE”), by its Administrator, whose address is 201 Merchant Street, Suite 1520, Honolulu, Hawai‘i 96813, and _____(hereinafter “BUSINESS ASSOCIATE”), a _____, whose business address is as follows: _____.

RECITALS

A. The STATE has entered into a contract with BUSINESS ASSOCIATE and/or procured the following goods and services from BUSINESS ASSOCIATE: _____

B. BUSINESS ASSOCIATE’s contract and/or provision of goods and performance of services may require that: (1) Protected Health Information (defined below) or Electronic Protected Health Information (defined below) be disclosed to or used by BUSINESS ASSOCIATE; (2) BUSINESS ASSOCIATE create, receive, maintain or transmit Protected Health Information or Electronic Protected Health Information on behalf of the STATE; and/or (3) BUSINESS ASSOCIATE be provided or have access to Personal Information (defined below).

C. Both parties are committed to complying with the Privacy and Security Laws (defined below) with respect to Protected Health Information, Electronic Protected Health Information, and Personal Information.

D. This Agreement sets forth the terms and conditions pursuant to which the following will be handled: (1) Protected Health Information and Electronic Protected Health Information that is disclosed to or used by BUSINESS ASSOCIATE by virtue of its contract with the STATE and/or its provision of goods and services to or for the STATE; (2) Protected Health Information and Electronic Protected Health Information that is created, received, maintained or transmitted by BUSINESS ASSOCIATE on behalf of the STATE; and (3) Personal Information provided to BUSINESS ASSOCIATE or to which BUSINESS ASSOCIATE will have access by virtue of a contract with the STATE.

TERMS AND CONDITIONS

1. Introduction: The STATE, as defined in this Agreement, has determined that it is a Covered Entity or a Health Care Component of a Covered Entity under HIPAA (defined below) and the Privacy and Security Rules (defined below). In addition, the STATE is subject to use and disclosure restrictions regarding Personal Information under Act 10 (defined below) and Chapters 487N and 487R, Hawai‘i Revised Statutes.

The parties acknowledge that entry into this Agreement is necessary and desirable in order to: (a) protect the privacy and security of Protected Health Information and Electronic Protected Health Information in accordance with the Privacy and Security Laws and because BUSINESS ASSOCIATE is a "business associate" of the STATE as that term is used in 45 Code of Federal Regulations ("C.F.R.") § 160.103; and (b) protect against the unauthorized use and disclosure of Personal Information that BUSINESS ASSOCIATE has been provided or to which BUSINESS ASSOCIATE has access by virtue of a contract with the STATE.

2. Definitions:

a. Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in the Privacy and Security Laws.

b. Act 10. "Act 10" shall mean Act 10, 2008 Session Laws of Hawai'i, Special Session.

c. Agreement. "Agreement" shall mean this agreement between STATE and BUSINESS ASSOCIATE and any and all attachments, exhibits and special conditions attached hereto.

d. ARRA. "ARRA" shall mean the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, and the rules and regulations promulgated under the ARRA.

e. Breach. "Breach" shall have the meaning set forth in the ARRA.

f. De-identified Information. "De-identified Information" shall have the meaning set forth in 45 C.F.R. §§ 164.514(a)-(b).

g. Electronic Protected Health Information. "Electronic Protected Health Information" shall have the meaning set forth in 45 C.F.R. § 160.103. For purposes of this Agreement, "Electronic Protected Health Information" is limited to Electronic Protected Health Information that is: (i) disclosed to or used by BUSINESS ASSOCIATE by virtue of its contract with the STATE and/or its provision of goods and services to or for the STATE; and/or (ii) created, received, maintained, or transmitted by BUSINESS ASSOCIATE on behalf of the STATE.

h. Electronic Transactions Rule. "Electronic Transactions Rule" shall mean the final rule set forth in 45 C.F.R. §§ 160 and 162.

i. HIPAA. "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

j. Individual. "Individual" means the person who is the subject of Protected Health Information, and shall include a person who qualifies as a personal representative under 45 C.F.R. § 164.502(g).

k. Individually Identifiable Health Information. "Individually Identifiable Health Information" shall have the meaning set forth in 45 C.F.R. § 160.103.

l. Personal Information. "Personal Information" shall have the meaning set forth in Section 487N-1, Hawai'i Revised Statutes. For purposes of this Agreement,

"Personal Information" is limited to Personal Information provided to BUSINESS ASSOCIATE or to which BUSINESS ASSOCIATE has access by virtue of a contract with the STATE.

m. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E, as the same may be amended from time to time.

n. Privacy and Security Laws. "Privacy and Security Laws" shall include: (1) the provisions of HIPAA that relate to the privacy and security of Protected Health Information and Electronic Protected Health Information; (2) the Privacy and Security Rules; (3) the provisions of ARRA, including the rules and regulations promulgated under the ARRA, that relate to the privacy and security of Protected Health Information and Electronic Protected Health Information; (4) Act 10 and, to the extent applicable, Chapters 487N and 487R, Hawai‘i Revised Statutes; and (5) other Federal and State privacy or security statutes and regulations that apply to Protected Health Information, Electronic Protected Health Information, or Personal Information.

o. Protected Health Information. "Protected Health Information" shall have the meaning set forth in 45 C.F.R. § 160.103. For purposes of this Agreement, "Protected Health Information" is limited to Protected Health Information that is: (i) disclosed to or used by BUSINESS ASSOCIATE by virtue of its contract with the STATE and/or its provision of goods and services to or for the STATE; and/or (ii) created, received, maintained, or transmitted by BUSINESS ASSOCIATE on behalf of the STATE.

p. Secretary. "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or designee.

q. Security Rule. "Security Rule" shall mean the Health Insurance Reform: Security Standards at 45 C.F.R. Part 160, Part 162, and Part 164, Subparts A and C, as the same may be amended from time to time.

r. Unsecured Protected Health Information. "Unsecured Protected Health Information" shall have the meaning set forth in the ARRA.

3. Obligations and Activities of BUSINESS ASSOCIATE

a. BUSINESS ASSOCIATE agrees to not use or disclose Protected Health Information, Electronic Protected Health Information, and Personal Information other than as permitted or required by this Agreement or as Required By Law.

b. BUSINESS ASSOCIATE agrees to use appropriate safeguards to prevent use or disclosure of Protected Health Information, Electronic Protected Health Information, and Personal Information other than as provided for by this Agreement.

c. BUSINESS ASSOCIATE agrees to implement administrative, physical, and technical safeguards (as those terms are defined in the Security Rule) that reasonably and appropriately protect the confidentiality, integrity and availability

of Electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of the STATE. Without limiting the foregoing, BUSINESS ASSOCIATE agrees to implement administrative, physical, and technical safeguards to comply with 45 C.F.R. §§ 164.308, 164.310, and 164.312, as and to the extent that such is required of business associates under the Privacy and Security Laws (as amended by the ARRA).

(i) Required Safeguards. BUSINESS ASSOCIATE shall use all appropriate safeguards to prevent use or disclosure of Protected Health Information received from, or created or received on behalf of, STATE, other than as provided for in this Agreement or as required by law. These safeguards will include, but are not limited to:

(I) Training. Providing annual training to relevant employees, contractors, and subcontractors on how to prevent the improper use or disclosure of Protected Health Information; and updating and repeating training on a regular basis;

(II) Administrative Safeguards. Adopting policies and procedures regarding the safeguarding of Protected Health Information; and Enforcing those policies and procedures, including sanctions for anyone not found in compliance;

(III) Technical and Physical Safeguards. Implementing appropriate technical safeguards to protect Protected Health Information, including access controls, authentication, and transmission security; and implementing appropriate physical safeguards to protect Protection Health Information, including workstation security and device and media controls.

d. In accordance with Part V of Act 10, BUSINESS ASSOCIATE agrees to implement: (i) technological safeguards to reduce exposure to unauthorized access to Personal Information, (ii) mandatory training on security awareness topics relating to Personal Information protection for BUSINESS ASSOCIATE's employees, and (iii) confidentiality agreements to be signed by BUSINESS ASSOCIATE's employees. BUSINESS ASSOCIATE further agrees to safeguard Protected Health Information, Electronic Protected Health Information, and Personal Information in accordance with any rules, policies, procedures and directions adopted or implemented by STATE to the extent that such are communicated to BUSINESS ASSOCIATE.

e. BUSINESS ASSOCIATE agrees to ensure that any agent (including a contractor or subcontractor) to whom it provides Protected Health Information, Electronic Protected Health Information, or Personal Information agrees to the same restrictions and conditions that apply to BUSINESS ASSOCIATE with respect to such information under this Agreement and the Privacy and Security Laws. BUSINESS ASSOCIATE further agrees to ensure that any such agent shall safeguard such Protected Health Information, Electronic Protected Health Information, and Personal Information in accordance with any rules, policies,

procedures and directions adopted or implemented by STATE to the extent that such are communicated to BUSINESS ASSOCIATE. BUSINESS ASSOCIATE agrees to ensure that any such agent shall implement reasonable and appropriate safeguards to protect Protected Health Information.

f. BUSINESS ASSOCIATE agrees to implement reasonable policies and procedures to comply with 45 C.F.R. § 164.316, as and to the extent that such is required of business associates under the Privacy and Security Laws (as amended by the ARRA).

g. BUSINESS ASSOCIATE agrees to provide access to Protected Health Information in the Designated Record Set to STATE or, as directed by STATE, to an Individual to the extent and in the manner required by 45 C.F.R. § 164.524.

h. BUSINESS ASSOCIATE agrees to make Protected Health Information available for amendment and to incorporate any amendments to Protected Health Information that the STATE directs or agrees to in accordance with the requirements of 45 C.F.R. § 164.526.

i. BUSINESS ASSOCIATE agrees to document disclosures of Protected Health Information, disclosures of Electronic Protected Health Information and information related to such disclosures as would be required for STATE to respond to a request by an Individual for an accounting of disclosures of: (1) Protected Health Information in accordance with 45 C.F.R. § 164.528; and (2) Electronic Protected Health Information in accordance Section 13405(c) of the ARRA. BUSINESS ASSOCIATE further agrees to collect and provide to STATE, any and all information that is reasonably necessary for STATE to timely respond to such requests by an Individual for an accounting of disclosures.

j. BUSINESS ASSOCIATE agrees to keep a log of Breaches of Unsecured Protected Health Information in such form and with such information as to enable the STATE to comply with Section 13402(e)(3) of the ARRA and the rules and regulations promulgated under ARRA.

k. BUSINESS ASSOCIATE agrees to keep a complete log of disclosures made of Personal Information in accordance with Section 8(b)(6) of Act 10.

l. BUSINESS ASSOCIATE agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of Protected Health Information and Electronic Protected Health Information available to STATE and/or to the Secretary, at reasonable times and places or as designated by the STATE and/or the Secretary, for purposes of determining compliance with the Privacy and Security Laws. BUSINESS ASSOCIATE further agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of Personal Information available to STATE, at reasonable times and places or as designated by the STATE, for purposes of determining compliance with this Agreement, Act 10, and other Federal and State laws regarding the use and disclosure of Personal Information.

m. BUSINESS ASSOCIATE agrees to report to STATE any disclosure or use of Protected Health Information not provided for by this Agreement, of which BUSINESS ASSOCIATE becomes aware, but in no event later than five (5) business days of first learning of any such use or disclosure. BUSINESS ASSOCIATE further agrees to report to STATE any security incidents that are required to be reported by or to the STATE under 45 C.F.R. Part 164, particularly 45 C.F.R. § 164.314. BUSINESS ASSOCIATE agrees that if any of its employees, agents, subcontractors, and/or representatives use and/or disclose Protected Health Information received from, or created or received on behalf of, STATE, or any derivative De-identified Information in a manner not provided for in this Agreement, BUSINESS ASSOCIATE shall ensure that such employees, agents, subcontractors, and/or representatives shall receive training on BUSINESS ASSOCIATE's procedures for compliance with the Privacy Rule, or shall be sanctioned or prevented from accessing any Protected Health Information BUSINESS ASSOCIATE receives from, or creates or receives on behalf of, STATE. Continued use of Protected Health Information in a manner contrary to the terms of this Agreement shall constitute a material breach of this Agreement.

n. If there is a Breach of Unsecured Protected Health Information, BUSINESS ASSOCIATE shall: (i) notify the STATE in writing of the Breach no later than twenty (20) calendar days after BUSINESS ASSOCIATE's discovery of the Breach; (ii) investigate and report to STATE on the causes of the Breach, including without limitation, any steps that BUSINESS ASSOCIATE will take to mitigate the Breach and prevent the occurrence of future similar Breaches; (iii) in consultation with STATE, provide all notifications regarding the Breach that STATE and/or BUSINESS ASSOCIATE are required to make under ARRA, including without limitation, written notices to individuals, notices to the media, and notices to the Secretary or any other governmental entity, all such notices to be made in accordance with all ARRA requirements; (iv) unless the Breach is primarily caused by the negligence or other fault of the STATE, indemnify and hold STATE harmless from all claims, lawsuits, administrative proceedings, judgments, damages, liabilities, penalties, and costs arising from the Breach, including all costs of investigating the Breach, providing all required notices, and otherwise complying with all ARRA requirements; and (v) provide a log of all Breaches of Unsecured Protected Health Information to the STATE no later than twenty (20) calendar days after the end of each calendar year, which log shall include all information that STATE needs in order to comply with Section 13402(e)(3) of the ARRA.

o. If there is a "security breach" regarding Personal Information as that term is defined in Section 487N-1, Hawai‘i Revised Statutes, BUSINESS ASSOCIATE shall: (i) notify the STATE in writing of the security breach no later than twenty (20) calendar days after BUSINESS ASSOCIATE's discovery of the security breach; (ii) investigate and report to STATE on the causes of the security breach, including without limitation, any steps that BUSINESS ASSOCIATE will take to mitigate the Breach and prevent the occurrence of future similar Breaches; (iii) in consultation with STATE, provide all notifications regarding the security breach that STATE and/or BUSINESS ASSOCIATE are required to make under Chapter 487N and other applicable Hawai‘i Revised Statutes; (iv) unless the security

breach is primarily caused by the negligence or other fault of the STATE, indemnify and hold STATE harmless from all claims, lawsuits, administrative proceedings, judgments, damages, liabilities, penalties, and costs arising from the security breach, including all costs of investigating the security breach, providing all required notices, and otherwise complying with Chapter 487N and other applicable Hawai‘i Revised Statutes; and (v) assist the State in providing any written report to the legislature or other government entities that is required by Chapter 478N and other applicable Hawai‘i Revised Statutes.

p. BUSINESS ASSOCIATE agrees to mitigate, to the extent practicable, any harmful effect that is known to BUSINESS ASSOCIATE of: (1) a security breach or disclosure or use of Protected Health Information, Electronic Protected Health Information, or Personal Information by BUSINESS ASSOCIATE in violation of the requirements of this Agreement; and/or (2) a Breach of Unsecured Protected Health Information by BUSINESS ASSOCIATE or any of its officers, employees, or agents (including contractors and subcontractors).

q. BUSINESS ASSOCIATE shall, upon notice from STATE, accommodate any restriction to the use or disclosure of Protected Health Information and any request for confidential communications to which STATE has agreed in accordance with the Privacy Rule.

r. BUSINESS ASSOCIATE shall comply with any other requirements of the Privacy Law, the Privacy Rule, the Security Law, and the Security Rule not expressly specified in this Agreement, as and to the extent that such requirements apply to business associates under the Privacy Law, the Privacy Rule, the Security Law, and the Security Rule, as they may be amended from time to time.

4. Permitted Uses and Disclosures by BUSINESS ASSOCIATE

a. General Use and Disclosure Provisions. Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may disclose or use Protected Health Information, Electronic Protected Health Information, and Personal Information to perform functions, activities, or services for, or on behalf of, STATE as specified in this Agreement, provided that such disclosure or use would not violate any Privacy and Security Laws if done by STATE.

b. Specific Use and Disclosure Provisions

(i) Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may use Protected Health Information and Personal Information for the proper management and administration of the BUSINESS ASSOCIATE or to carry out the legal responsibilities of the BUSINESS ASSOCIATE.

(ii) Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may disclose Protected Health Information for the proper management and administration of the BUSINESS ASSOCIATE, for disclosures that are Required By Law, or where BUSINESS ASSOCIATE obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required

By Law or for the purpose for which it was disclosed to the person and the person agrees to notify BUSINESS ASSOCIATE of any instances where the confidentiality of the information has been breached. Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may disclose Personal Information where such disclosure is permitted by applicable Federal or State laws.

(iii) Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may use Protected Health Information to provide Data Aggregation services to STATE as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(iv) BUSINESS ASSOCIATE may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

c. Further Uses Prohibited. Except as provided in sections 4.a and 4.b, above, BUSINESS ASSOCIATE is prohibited from further using or disclosing any information received from STATE, or from any other Business Associate of STATE, for any commercial purposes of BUSINESS ASSOCIATE, including, for example, "data mining".

5. Minimum Necessary. BUSINESS ASSOCIATE shall only request, use, and disclose the minimum amount of Protected Health Information necessary to accomplish the purpose of the request, use, or disclosure.

6. Prohibited, Unlawful, or Unauthorized Use and Disclosure of Protected Health Information. BUSINESS ASSOCIATE shall not use or further disclose any Protected Health Information received from, or created or received on behalf of, STATE, in a manner that would violate the requirements of the Privacy Rule, if done by STATE.

7. Indemnity by BUSINESS ASSOCIATE. BUSINESS ASSOCIATE shall defend, indemnify and hold harmless STATE and STATE'S officers, employees, and agents (including contractors and subcontractors) from and against any and all claims, demands, lawsuits, administrative or other proceedings, judgments, liabilities, damages, losses, fines, penalties, and costs, including reasonable attorneys' fees, that are caused by or arise out of a breach or failure to comply with any provision of this Agreement and/or by a violation of any provision of the Privacy and Security Laws, including the ARRA, by BUSINESS ASSOCIATE or any of BUSINESS ASSOCIATE's officers, employees, or agents (including contractors and subcontractors).

8. Permissible Requests by STATE. STATE shall not request BUSINESS ASSOCIATE to disclose or use Protected Health Information, Electronic Protected Health Information, or Personal Information in any manner that would not be permissible under the Privacy and Security Laws if done by STATE.

9. Standard Electronic Transactions. STATE and BUSINESS ASSOCIATE agree that BUSINESS ASSOCIATE shall, on behalf of STATE, transmit data for transactions that are required to be conducted in standardized format under the Electronic Transactions Rule. BUSINESS ASSOCIATE shall comply with the Electronic

Transactions Rule for all transactions conducted on behalf of STATE that are required to be in standardized format. BUSINESS ASSOCIATE shall ensure that any of its subcontractors to whom it delegates any of its duties under its contract with STATE, agrees to conduct and agrees to require its agents or subcontractors to comply with the Electronic Transactions Rule for all transactions conducted on behalf of STATE that are required to be in standardized format.

10. Termination for Cause. In addition to any other remedies provided for by this Agreement, upon STATE's knowledge of a material breach or violation by BUSINESS ASSOCIATE of the terms of this Agreement, STATE may either:

    a. Provide an opportunity for BUSINESS ASSOCIATE to cure the breach or end the violation, and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by the STATE; or

    b. Immediately terminate this Agreement if BUSINESS ASSOCIATE has breached or violated a material term of this Agreement and cure is not possible; and

    c. If neither termination nor cure is feasible, STATE shall report any violation of the federal Privacy and Security Rules to the Secretary.

11. Effect of Termination.

    a. Upon any termination of this Agreement, until notified otherwise by STATE, BUSINESS ASSOCIATE shall extend all protections, limitations, requirements, and other provisions of this Agreement to: (i) all Protected Health Information received from or on behalf of STATE or created or received by BUSINESS ASSOCIATE on behalf of STATE; (ii) all Electronic Protected Health Information created, received, maintained or transmitted by BUSINESS ASSOCIATE on behalf of STATE; and (iii) all Personal Information.

    b. Upon any termination of this Agreement, STATE shall determine whether it is feasible for BUSINESS ASSOCIATE to return to STATE or destroy all or any part of: (i) all Protected Health Information received from or on behalf of STATE or created or received by BUSINESS ASSOCIATE on behalf of STATE that BUSINESS ASSOCIATE maintains in any form and shall retain no copies of such information; (ii) all Electronic Protected Health Information created, received, maintained or transmitted by BUSINESS ASSOCIATE on behalf of STATE; and (iii) all Personal Information. In connection with the foregoing, upon any termination of the Agreement, BUSINESS ASSOCIATE shall notify the STATE in writing of any and all conditions that make return or destruction of such information not feasible and shall provide STATE with any requested information related to the STATE'S determination as to whether the return or destruction of such information is feasible.

    c. If STATE determines that return or destruction of all or any part of the Protected Health Information, Electronic Protected Health Information, and Personal Information is feasible, at STATE's option, BUSINESS ASSOCIATE shall return or destroy such information. If STATE directs that BUSINESS ASSOCIATE return or destroy all or any part of the Protected Health Information, Electronic

Protected Health Information, and Personal Information, it is understood and agreed that BUSINESS ASSOCIATE shall retain no copies of such information. Destruction of Personal Information shall be performed in accordance with Chapter 487R, Hawai‘i Revised Statutes. Notwithstanding the foregoing, BUSINESS ASSOCIATE shall not destroy any Protected Health Information in less than six (6) years from the date that it is received by BUSINESS ASSOCIATE.

d. If STATE determines that return or destruction of all or any part of the Protected Health Information, Electronic Protected Health Information, and Personal Information is not feasible or opts not to require the return or destruction of such information, BUSINESS ASSOCIATE shall extend the protections, limitations, requirements, and other provisions of this Agreement to such information for so long as BUSINESS ASSOCIATE maintains such information. STATE understands that BUSINESS ASSOCIATE's need to maintain portions of the Protected Health Information in records of actuarial determinations and for other archival purposes related to memorializing advice provided, can render return or destruction infeasible.

e. The provisions of this Section 11 shall apply with respect to all terminations of this Agreement, for any reason whatsoever, and to any and all Protected Health Information, Electronic Protected Health Information, and Personal Information in the possession or control of any and all agents and subcontractors of BUSINESS ASSOCIATE.

12. Miscellaneous

a. Regulatory References. A reference in this Agreement to a section in the Privacy and Security Laws means the section in effect or as amended.

b. Amendment. BUSINESS ASSOCIATE and STATE agree to take all actions necessary to amend this Agreement in order for STATE to comply with the requirements of the Privacy Rule, Security Rule, HIPAA, ARRA, and/or any other Federal or State law that is determined to apply to the Protected Health Information, Electronic Protected Health Information, or Personal Information covered by this Agreement. All amendments shall be in writing and executed by both parties.

c. Survival. The respective rights and obligations of STATE and BUSINESS ASSOCIATE under Sections 3, 5, and 8 above, shall survive the termination of this Agreement.

d. Interpretation. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the Privacy and Security Laws, as amended, the Privacy and Security Laws shall control. Where provisions of this Agreement are different than those mandated in the Privacy or Security Laws, but are nonetheless permitted by the Privacy or Security Laws, the provisions of this Agreement shall control. Any ambiguity in this Agreement shall be resolved to permit STATE to comply with the Privacy and Security Laws.

e. Third Parties. This Agreement is solely between BUSINESS ASSOCIATE and the STATE, and may be enforced only by BUSINESS ASSOCIATE or the STATE. This Agreement shall not be deemed to create any rights in any third parties or to create any obligations or liabilities of BUSINESS ASSOCIATE or the STATE to any third party.

HAWAI'I EMPLOYER-UNION HEALTH BENEFITS TRUST FUND ("STATE")

By _____
Its Administrator

Date: _____, 2016

[*name of business associate*]
("BUSINESS ASSOCIATE")

By _____

Its _____

Date: _____, 2016

APPROVED AS TO FORM:

_____
Deputy Attorney General

Revised: 12/11/2015

```
*-------------------------------------------------------------*
*     HEADER (TYPE = '43')                                    *
*-------------------------------------------------------------*

Constant                Alphanumeric 001-009  9 Value 430000100
Batch Number            Alphanumeric 010-013  4
Constant                Alphanumeric 014-018  5 Value 00000
Processing Date         Alphanumeric 019-024  6 MMDDYY
Processing Date         Alphanumeric 025-032  8 CCYYMMDD
Constant                Alphanumeric 033-120 88 Zeros
Constant                Alphanumeric 121-167 47 Spaces

*-------------------------------------------------------------*
*     CHECK RECORD (TYPE = '50')                              *
*-------------------------------------------------------------*

Constant                Alphanumeric 001-002  2 Value 50
Sequence Number         Alphanumeric 003-007  5
Constant                Alphanumeric 008-009  2 Value 00
Check Amount            Alphanumeric 010-019 10 $$$$$$$$$¢¢
Account Number          Alphanumeric 020-035 16
Route Transit Number    Alphanumeric 036-044  9
Check Number            Alphanumeric 045-060 16
Constant                Alphanumeric 061-120 60 Zeros
Constant                Alphanumeric 121-167 47 Spaces

*-------------------------------------------------------------*
*     INVOICE RECORD (TYPE = '01')                            *
*-------------------------------------------------------------*
```

Check Payment

```
Constant                Alphanumeric 001-002  2 Value 01
Sequence Number         Alphanumeric 003-007  5
Account Number          Alphanumeric 008-023 16
Applied Amount          Alphanumeric 024-033 10 $$$$$$$$$¢¢
Net Amount              Alphanumeric 034-043 10 $$$$$$$$$¢¢
Gross Amount            Alphanumeric 044-053 10 $$$$$$$$$¢¢
Customer Defined        Alphanumeric 054-120 67 Zeros
Constant                Alphanumeric 121-167 47 Spaces
```

Credit Card Payment

```
Constant                Alphanumeric 001-002  2 Value 01
Sequence Number         Alphanumeric 003-007  5
Account Number          Alphanumeric 008-023 16
Applied Amount          Alphanumeric 024-033 10 $$$$$$$$$¢¢
Net Amount              Alphanumeric 034-043 10 $$$$$$$$$¢¢
Gross Amount            Alphanumeric 044-053 10 $$$$$$$$$¢¢
Credit Card Account     Alphanumeric 054-057  4
Credit Card Approval Cd Alphanumeric 058-072 15
Customer Defined        Alphanumeric 073-120 48 Zeros
Constant                Alphanumeric 121-167 47 Spaces
```

```
*-------------------------------------------------------------*
*     TRAILER (TYPE = '30')                                   *
*-------------------------------------------------------------*

Constant                Alphanumeric 001-003  3 Value 300
Trailer Count           Alphanumeric 004-007  4 ####
Trailer Amount          Alphanumeric 008-023 16 $$$$$$$$$$$$$$$¢¢
Beginning Sequence      Alphanumeric 024-028  5 #####
Ending Sequence         Alphanumeric 029-033  5 #####
Constant                Alphanumeric 034-120 87 Zeros
Constant                Alphanumeric 121-167 47 Spaces
```

030770 EUTF
Created: 06/12/2013
Revised:

Excerpt from Default Layout Document:

```
*-------------------------------------------------------------*
*     INVOICE RECORD (TYPE = '01')                            *
*-------------------------------------------------------------*

Constant                Alphanumeric 2          Value 01
Sequence Number         Alphanumeric 5
Account Number          Alphanumeric 16
Applied Amount          Alphanumeric 10         $$$$$$$$¢¢
Net Amount              Alphanumeric 10         $$$$$$$$¢¢
Gross Amount            Alphanumeric 10         $$$$$$$$¢¢
Customer Defined        Alphanumeric 67         Zeros
Constant                Alphanumeric 47         Spaces
```

Output File Field to Scanline Field Mapping:

Output File Field	Output File Position	Scanline Field	Scanline Position
Account Number	8-23 16 characters	Customer Number (10)	1-8
Applied Amount	24-33 10 characters	n/a	n/a
Net Amount	34-43 10 characters	Amount Due (20)	9-18
Gross Amount	44-53 10 characters	n/a	n/a
Customer Defined	54-59 6 characters	Lockbox Number (30)	19-24
	60-120 61 characters	n/a	n/a

Check Disbursement File Layout

Header Record (One header record per file)

Field #	Field Name	Start Position	End Position	Length	Data Type	Comments
01	Line Number for header	01	05	5	Numeric	
02	Record Number	06	06	1	Numeric	
03	Routing Transit Number	07	15	9	Numeric	
04	Customer Number	16	25	10	Alpha Numeric	
05	Date	47	56	10	Alpha Numeric	
		57	123			blanks

Field #	Field Name	Start Position	End Position	Length	Data Type	Comments
01	Fund Code	01	01	1	Alpha	
02	Filler	02	02	1		
03	Department Voucher Alpha Code	03	03	1	Alpha	
04	Department Voucher Number	04	08	5	Numeric	
05	Line Number	09	13	5	Numeric	
06	Record Number	14	14	1	Numeric	
07	Comptroller Voucher Number	15	20	6		
08	Name/Address	21	51	31	Alpha Numeric	
09	Amount	52	60	9	Numeric	
10	Type Code	61	61	1	Alpha Numeric	
11	Date	62	71	10	Alpha Numeric	Format: MON YYYY
12	Employee ID	72	80	9	Alpha Numeric	

Trailer Record (One Trailer record per file)

Field #	Field Name	Start Position	End Position	Length	Data Type	Comments
01	Line Number for Trailer	01	05	5	Numeric	
02	Record Number	06	06	1	Numeric	
04	Amount Total	38	46	9	Numeric	
05	Number of records	47	51	5	Numeric	
		52	123			Blanks