



**CONTRACT FOR PROFESSIONAL SERVICES**  
**HTA Contract Number CON 21038**

This Contract ("Contract" or "Agreement"), executed on the respective dates indicated below, is effective as of the date of execution ("EFFECTIVE DATE"), by and between the **Hawai'i Tourism Authority**, State of Hawai'i ("STATE" or "HTA"), by its Chief Executive Officer (hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")), whose address is 1801 Kalākaua Avenue, Honolulu, Hawai'i 96815 and **Hawai'i Visitors and Convention Bureau** ("CONTRACTOR" or "HVCB"), a nonprofit entity under the laws of the State of Hawai'i whose business address and federal and state general excise taxpayer identification numbers are as follows: **2270 Kalakaua Ave., Suite 801, Honolulu, Hawai'i 96815. FEID 99-0040323. State Tax ID GE-050-254-0288-01.**

**RECITALS**

- A. Whereas, the HTA has identified the need for three separate services to be provided by CONTRACTOR for this Destination Management Action Plan (DMAP) contract: a) managing, implementing and communicating to the public actions taken towards HTA's DMAP; b) awarding grants, through a competitive process, for the Community Enrichment Programs (CEP) in the areas of sports, culture, health and wellness, education, agriculture, nature and volunteer tourism; and c) spearhead the creation and development of a statewide Universal Reservations System (URS); and
- B. Whereas, these projects would help to manage tourism in high trafficked areas, provide and create economic development opportunities for communities, showcase Hawai'i's unique customs and cultures, and promote positive resident-visitor interaction; and
- C. Whereas, a meeting was held between HTA's Vice President of Marketing & Product Development, Pattie Herman, and Director of Community Enrichment, Caroline Anderson; and the HVCB's President & CEO, John Monahan, and Chief Financial Officer, Tom Mullen. In the meeting, HTA discussed the HVCB's involvement in the CEP as well as the implementation of the DMAPs. An agreement was made that HTA will provide funding to support a manager-level position on Kaua'i, O'ahu, Maui and Hawai'i Island to support the efforts in both areas; and
- D. Whereas, a follow-up meeting was held with HTA Chief Administrative Officer Keith Regan and HVCB leadership to discuss HVCB's expertise in light of the knowledge necessary to the study and implementation of a Universal Reservation System (URS), and it was decided to provide additional funding to support a manager-level position to oversee the work; and
- E. Whereas, the HTA has determined in writing that it would not be practicable or advantageous to procure this service by competitive means due to the approach of the fiscal year end and thus a procurement exemption is appropriate, and the STATE desires to retain and engage the CONTRACTOR to provide the services described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said services; and
- F. Whereas, the STATE desires to retain and engage the CONTRACTOR to provide the services described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said services; and

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- G. Whereas, money is available to fund this Contract pursuant to **Hawai'i Revised Statutes Section 237D-6.5** in adequate amounts; and
- H. Whereas, pursuant to **Hawai'i Revised Statutes Section 201B-3 and 201B-7**, the STATE is authorized to enter into this Contract.

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 Attachment-S1, which is made a part of this Contract.
2. Compensation. The CONTRACTOR shall be compensated for goods supplied or satisfactory completion of services performed, or both, under this Contract, for a total amount not to exceed **NINE MILLION FOUR HUNDRED NINE THOUSAND ONE HUNDRED TWELVE AND NO/100 DOLLARS (\$9,409,112.00)**, inclusive of all approved costs incurred and taxes, according to the Compensation and Payment Schedule set forth in Attachment-S2, which is made a part of this CONTRACT.
3. Term of Contract and Time of Performance. This Contract starts on June 30, 2021 and ends on **May 31, 2023** with the possibility of two (2) 15-month options.
4. Standards of Conduct Declaration. The Standards of Conduct Declaration by the CONTRACTOR is attached to, and made a part of, this Contract.
5. Other Terms and Conditions. The General Conditions and any Special Provisions are attached to, and made a part of, this Contract. In the event of a conflict between the General Conditions and the Special Provisions, the Special Provisions shall control.
6. Legal 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 this Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address indicated in this 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.



**[SIGNATURE PAGE FOLLOWS]**

IN VIEW OF THE ABOVE, the parties herein execute this Contract by their signatures, to be effective as of the most recent signature date below.

**STATE**

  
\_\_\_\_\_  
(Signature) 6/28/21  
(Date)  
**John DeFries**  
**President and Chief Executive Officer**  
**Hawai'i Tourism Authority**

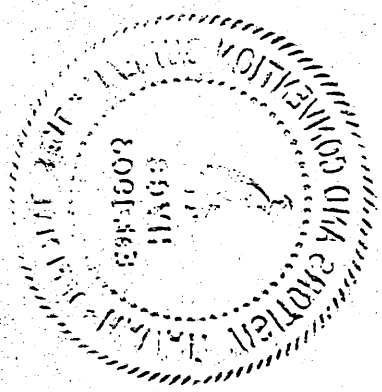
**CONTRACTOR:**

  
\_\_\_\_\_  
(Signature) 6/28/21  
(Date)  
 COO  
\_\_\_\_\_  
(Print Name and Title)



**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
(Signature)  
**Gregg J. Kinkley**  
Deputy Attorney General



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12/1/68  
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12/1/68

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IN VIEW OF THE ABOVE, the parties herein execute this Contract by their signatures, to be effective as of the most recent signature date below.

**STATE**

  
\_\_\_\_\_  
(Signature) 6/28/21  
(Date)  
**John DeFries**  
President and Chief Executive Officer  
Hawai'i Tourism Authority

**CONTRACTOR:**

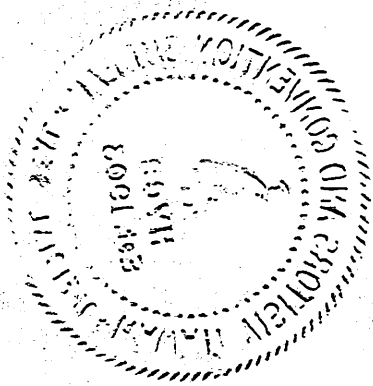
  
\_\_\_\_\_  
(Signature) 6/25/21  
(Date)

John Monaghan Pres. & CEO  
(Print Name and Title)



**APPROVED AS TO FORM:**

\_\_\_\_\_  
(Signature)  
**Gregg J. Kinkley**  
Deputy Attorney General



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*[Faint handwritten text]*


*[Faint handwritten text]*

IN VIEW OF THE ABOVE, the parties herein execute this Contract by their signatures, to be effective as of the most recent signature date below.

STATE

  
\_\_\_\_\_  
(Signature) 6/28/21  
(Date)  
**John DeFries**  
**President and Chief Executive Officer**  
**Hawai'i Tourism Authority**

CONTRACTOR:

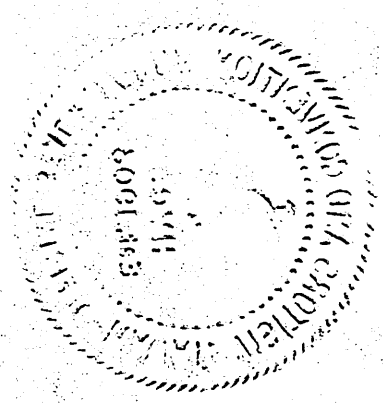
  
\_\_\_\_\_  
(Signature) 6/27/21  
(Date) HUCR  
*Elliot K Mills Chairman of the Board.*  
\_\_\_\_\_  
(Print Name and Title)



APPROVED AS TO FORM:

\_\_\_\_\_  
(Signature)  
**Gregg J. Kinkley**  
Deputy Attorney General





## 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, Hawai'i Revised Statutes (HRS).

 \_\_\_\_\_  
(Signature) 6/28/21  
John DeFries (Date)  
President and Chief Executive Officer

\*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 Hawai'i.

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)

**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 Hawaii Visitors + Convention Bureau, CONTRACTOR, the undersigned does declare as follows:

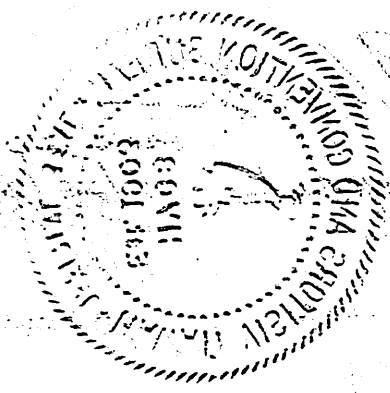
1. CONTRACTOR  is  is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this 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, or a competitive sealed proposal. 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 with the State Ethics Commission (Section 84-15(a), HRS).

CONTRACTOR

Signed [Signature]  
John Mountain Date 6/25/21  
 Print Name and Title  
HVLB Hawaii Visitors + Convention Bureau  
 Name of Contractor



### **SCOPE OF SERVICES**

a) The CONTRACTOR shall perform and provide, in a satisfactory and proper manner as determined by the STATE, all goods and services listed as follows:

1. **Personnel:** The CONTRACTOR shall assign one person for each of the four counties. These four people are to have primary responsibility for directing, supervising, and implementing the Destination Management Action Plan (DMAP) program, and to help facilitate the Community Enrichment and Signature Events Programs, in their respective counties, and will work closely with the HTA and with key stakeholders. HTA shall be included in the selection process and shall work with CONTRACTOR to better refine the qualification, including by not limited to experience in economic development or marketing.
2. **DMAP:** The CONTRACTOR shall implement DMAP actions in conjunction with HTA's islands' DMAPs Steering Committee and in consultation with HTA, including but not limited to:
  - a. Assisting with the communication and promotion of DMAPs to the community and visitor industry.
  - b. Providing DMAP proposals for HTA's review and approval before expending funds to support DMAP implementation.
  - c. Developing and implementing MEDIA CAMPAIGNS for the months of July through December 2021, subject to HTA approval, and engaging with broadcast and print media companies in all four counties to communicate the DMAP progress the benefits to residents.
3. **Community Enrichment Program (CEP):** The CONTRACTOR shall conduct a Community Enrichment Program for each county (hereinafter referred to as the "PROGRAM"), to be issued in the month of September 2021. The CONTRACTOR shall work with HTA to develop a request for proposals (RFP) in accordance with, and in fulfillment of, all terms and conditions of the PROGRAM as established by the HTA, including but not limited to, adhering to the criteria and guidelines of the PROGRAM as described in the HTA's 2022 Community Enrichment Program dated June 14, 2021 and incorporated herein by reference. Activities include but are not limited to:
  - a. Providing adequate public notice about the request for proposals ("RFP"), including but not be limited to email notice to any applicable bidder mailing lists or membership lists, and notice via island newspapers.
  - b. Hold information briefings, with the coordination and participation of HTA, on each island to explain the PROGRAM and encourage submissions. Briefings are to include eligibility, criteria for selection, and process for contracting among other things.
  - c. Provide technical assistance to applicants during the RFP submission process, including but not limited to:
    - i. Providing technical and non-substantive guidance;

- ii. Helping applicants with questions regarding the formulation of their responses.
  - d. Coordinate with HTA on selecting, gathering and managing the evaluation committees for each county, including the distributing of proposals, the gathering and tabulating of evaluation scores, and the setting up of evaluation meeting dates and evaluation meeting venues.
  - e. ALL CEP AWARDS ARE SUBJECT TO HTA APPROVAL.
  - f. Awardees shall enter into agreement with the CONTRACTOR. CONTRACTOR shall ensure that all the awardees, and all the projects awarded, comply with and conform to the goals and objectives of the PROGRAM, and follow the guidelines for the PROGRAM.
  - g. In coordination with HTA, the CONTRACTOR shall provide a capacity building training workshop for 2022 PROGRAM awardees on each island, to include but not be limited to marketing their project via social media, working with the island visitors bureaus, contract reporting, and payment process.
  - h. The CONTRACTOR shall work with HTA's Brand Management team and its marketing contractors on any appropriate promotional and marketing materials for the HTA to include, to the extent possible, any projects supported through the PROGRAM.
4. Signature Events Program (SIGNATURE EVENTS): The CONTRACTOR shall conduct a Signature Events Program for each county (hereinafter referred to as the "SIGNATURE EVENTS"). The CONTRACTOR shall work with HTA to develop a request for proposals (RFP), to be issued in the month of September 2021, in accordance with, and in fulfillment of, all terms and conditions of the SIGNATURE EVENTS as established by the HTA. These are typically world-class events, larger in scale than those in the CEP "PROGRAM," and serve the purpose of attracting attendees and participants from outside of the state of Hawai'i through the use of extensive national and international marketing and media exposure. Activities include but are not limited to:
- a. Providing adequate public notice about the request for proposals ("RFP"), including but not be limited to email notice to any applicable bidder mailing lists or membership lists, and notice via island newspapers.
  - b. Holding information briefings, with the coordination and participation of HTA, on each island to explain the SIGNATURE EVENTS and encourage submissions. Briefings are to include eligibility, criteria for selection, and process for contracting among other things.
  - c. Provide technical assistance to applicants during the RFP submission process, including but not limited to:
    - i. Providing technical and non-substantive guidance;
    - ii. Helping applicants with questions regarding the formulation of their responses.
  - d. Coordinate with HTA on selecting, gathering and managing the evaluation committees for each county, including the distributing of proposals, the gathering and tabulating of

evaluation scores, and the setting up of evaluation meeting dates and evaluation meeting venues.

- e. ALL SIGNATURE EVENTS AWARDS ARE SUBJECT TO HTA APPROVAL.
  - f. Awardees shall enter into agreement with the CONTRACTOR. CONTRACTOR shall ensure that all the awardees, and all the projects awarded, comply with and conform to the goals and objectives of the SIGNATURE EVENTS, and follow the guidelines for the SIGNATURE EVENTS.
  - g. In coordination with HTA, the CONTRACTOR shall provide a capacity building training workshop for 2022 SIGNATURE EVENTS awardees on each island, to include but not be limited to marketing their project via social media, working with the island visitors bureaus, contract reporting, and payment process.
  - h. The CONTRACTOR shall work with HTA's Brand Management team and its marketing contractors on any appropriate promotional and marketing materials for the HTA to include, to the extent possible, any projects supported through the SIGNATURE EVENTS.
5. Universal Reservations System (URS): CONTRACTOR shall support a manager-level position to oversee the work to oversee the market research, procurement, and development of a robust URS for statewide leisure activities. This includes but is not limited to:
- a. Conducting market research and/or a landscape study to determine the best options for a URS and developing an RFP that maps out the different possible approaches to the problem and solicits workplans and quotes for each.
  - c. Soliciting proposals through an open tender RFP process. CONTRACTOR is to invite qualified vendors and publish the RFP announcement online, through a press release, and by any other effective means.
  - d. Coordinating with HTA on selecting, gathering and managing the evaluation committee, including the distributing of proposals, the gathering and tabulating of evaluation scores, and the setting up of evaluation meeting dates and evaluation meeting venues if necessary.
  - e. Contracting and managing the winning applicant.
  - f. Assisting with the communication and promotion of the URS to the community and visitor industry.
  - g. Final selection of the applicant is subject to final approval by the STATE.
- b) HTA reserves the right to instruct the CONTRACTOR to execute agreements for the PROGRAM, SIGNATURE EVENTS, and DMAPs as directed
  - c) The CONTRACTOR shall submit a monthly report to the HTA, to include but not be limited to:

- a. Status on implementation of the PROGRAM and all projects funded through the PROGRAM by county.
- b. Status on implementation of the SIGNATURE EVENTS and all projects funded through the SIGNATURE EVENTS by county.
- c. Complete and submit a final evaluation on each of the organizations and projects awarded HTA funds through the PROGRAM and SIGNATURE EVENTS, signed by a representative of that county's island visitors bureau, and compiled as part of the monthly report to HTA. A final evaluation form template will be provided to the CONTRACTOR by HTA.
- d. Status of the implementation of each DMAP action that staff and funding resources have been put towards.
- e. Status of the MEDIA CAMPAIGNS and outcomes, including but not limited to reach and/or viewership.
- f. HTA shall provide CONTRACTOR a monthly status report template.
- g. CONTRACTOR shall report on the previous month's work, due the 5th of each month.

d) The CONTRACTOR shall prepare and maintain financial records that sufficiently and properly reflect all income and other sources of funds, and all direct and indirect expenditures of any nature related to the CONTRACTOR's performance of this Contract. These records shall be subject to any inspection, review or audit by HTA.

e) The CONTRACTOR shall submit an annual financial report to HTA upon completion of the PROGRAM, SIGNATURE EVENTS, DMAP, and URS for the 2022 calendar year, according to the schedule outlined in this Contract. The financial report shall include, but not be limited to, a certification by the CONTRACTOR that all financial statements represented in the report are accurate and that the HTA funds allocated under this Contract have been expended in accordance with the provisions set forth in this Contract. All STATE funds not expended in accordance with the provisions set forth in this Contract shall be returned to the HTA.

f) The CONTRACTOR shall furnish all scheduled reports, per HTA instructions, and any additional reports or information that the HTA may, from time to time, require or request, including progress reports describing the status of all work required to be completed under this Contract.

**[END OF ATTACHMENT 1. "COMPENSATION AND PAYMENT SCHEDULE" FOLLOWS ON NEXT PAGE.]**



### COMPENSATION AND PAYMENT SCHEDULE

a) Notwithstanding the amount requested in the PROPOSAL or representations to the contrary, the total compensation for services to be provided by the CONTRACTOR under this Contract shall be the total sum of money not to exceed **NINE MILLION FOUR HUNDRED NINE THOUSAND ONE HUNDRED TWELVE AND NO/100 DOLLARS (\$9,409,112.00)**, inclusive of all approved costs incurred and taxes, and subject to the availability of funds. Payment shall be made by the STATE to the CONTRACTOR in accordance with paragraph 17 of the "General Conditions," and shall be subject to the following provisions:

1. Initial Payment: An amount not to exceed **TWO MILLION FOUR HUNDRED FIFTY-NINE THOUSAND ONE HUNDRED TWELVE AND NO/100 DOLLARS (\$2,459,112.00)**, tax inclusive, of which \$300,000 shall be for the URS. Upon NOTICE TO PROCEED and HTA's receipt of a) current Certificate of Vendor Compliance, b) a work plan for the PROGRAM, a work plan for DMAPS by island, and a workplan for the URS; c) names of the island-specific personnel to be hired to manage the DMAPS/PROGRAM and the management-level person to handle the URS; d) and a work plan for the MEDIA CAMPAIGNS for the DMAPS; submitted with original invoice for said initial payment amount stated herein-above.
2. Payment 2: An amount not to exceed **SEVEN HUNDRED THOUSAND AND NO/100 DOLLARS (\$700,000.00)**, tax inclusive, shall be paid to the CONTRACTOR within thirty (30) days of the STATE's receipt and approval of a monthly report submitted with original invoice for said payment amount on or about August 5, 2021.
3. Payment 3: An amount not to exceed **EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$800,000.00)**, tax inclusive, shall be paid to the CONTRACTOR upon STATE's receipt and approval of a monthly report submitted with original invoice for said payment amount, submitted on or about October 5, 2021.
4. Payment 4: An amount not to exceed **TWO MILLION FOUR THOUSAND AND NO/100 DOLLARS (\$2,004,000.00)**, tax inclusive, shall be paid to the CONTRACTOR upon the STATE's receipt and approval of a report of the 2022 PROGRAM projects that will be funded by island submitted with original invoice for said initial payment amount on or about November 5, 2021.
5. Interim URS PAYMENT: An amount not to exceed **ONE MILLION FIFTY THOUSAND AND NO/100 DOLLARS (\$1,050,000.00)**, tax inclusive, upon HTA's approval of a contractor for URS with payment to be made to the amount of the URS contract, plus the agreed management fee, submitted with original invoice for said amount on or about December 31, 2021.
6. Payment 5: An amount not to exceed **ONE MILLION ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,100,000.00)**, tax inclusive, shall be paid to the CONTRACTOR upon the STATE's receipt and approval of a monthly report submitted with original invoice for said amount on or about January 5, 2022.

7. Payment 6: An amount not to exceed **ONE HUNDRED THIRTY-THREE THOUSAND THREE HUNDRED THIRTY-THREE AND NO/100 DOLLARS (\$133,333.00)**, tax inclusive, shall be paid to the CONTRACTOR upon the STATE's receipt and approval of a monthly report submitted with original invoice for said payment amount on or about April 5, 2022.
8. Payment 7: An amount not to exceed **FOUR HUNDRED FIFTY-ONE THOUSAND NO/100 DOLLARS (\$451,000.00)**, tax inclusive, shall be paid to the CONTRACTOR upon the STATE's receipt and approval of a monthly report submitted with original invoice for said payment amount on or about August 5, 2022.
9. Payment 8: An amount not to exceed **THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00)**, tax inclusive, shall be paid to the CONTRACTOR upon the STATE's receipt and approval of a monthly report submitted with original invoice for said payment amount on or about November 5, 2022.
10. Payment 9: An amount not to exceed **SIXTY-SIX THOUSAND SIX HUNDRED SIXTY-SEVEN AND NO/100 DOLLARS (\$66,667.00)**, tax inclusive, shall be paid to the CONTRACTOR upon the STATE's receipt and approval of a monthly report submitted with original invoice for said payment amount on or about February 5, 2023.
11. Final Payment: An amount not to exceed **THREE HUNDRED FORTY-FIVE THOUSAND AND NO/100 DOLLARS (\$345,000.00)**, tax inclusive, of which \$150,000 is for the URS. Upon the STATE's receipt and approval of the following: (a) a current Certificate of Vendor Compliance; (b) final written report, as provided in Attachment 1; (c) final financial report as provided in Attachment 1; (d) copies of all the final PROGRAM written reports; (e) copies of all advertising and promotional activities; (f) satisfactory completion of all activities, services, and events related to the PROGRAM, DMAPs, MEDIA CAMPAIGNS, and URS in accordance with this Contract; submitted by April 30, 2023.

b) Itemized Breakdown: The total sum for the initial term of this contract is to be allocated, based on allowable expenses, as follows, subject to the availability of funds and with the understanding that any funds not expended by CONTRACTOR to implement the PROGRAM or DMAPs shall be returned to STATE

- i. ONE MILLION NINE HUNDRED FIFTY AND NO/100 DOLLARS (\$1,950,000.00) for Community Enrichment Program (PROGRAM).
- ii. SIX HUNDRED NINETY-FIVE THOUSAND FIVE HUNDRED THIRTY-EIGHT AND NO/100 DOLLARS (\$695,538.00) for Kaua'i DMAP.
- iii. ONE MILLION FIVE HUNDRED EIGHTEEN THOUSAND SEVEN HUNDRED NINETY-SIX AND NO/100 DOLLARS (\$1,518,796.00) for O'ahu DMAP.
- iv. ONE MILLION FORTY-SEVEN THOUSAND SIX HUNDRED TEN AND NO/100 DOLLARS (\$1,047,610.00) for Maui Nui DMAP.
- v. SEVEN HUNDRED FORTY-SEVEN THOUSAND ONE HUNDRED SIXTY-EIGHT AND NO/100 DOLLARS (\$747,168.00) for Hawai'i Island DMAP.

- vi. TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000) for MEDIA CAMPAIGNS.
- vii. SEVEN HUNDRED FIFTY THOUSAND AND NO/100 (\$750,000.00) for CONTRACTOR in support for the 2022 PROGRAM and DMAPS implementation, subject to availability of funds and HTA approval of all reports and performance of CONTRACTOR, as required under this Contract.
- viii. ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) for SIGNATURE EVENTS implementation, subject to availability of funds and HTA approval of all reports and performance of CONTRACTOR, as required under this Contract.
- ix. ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,500,000.00) for the Universal Reservation System contract plus CONTRACTOR management fee to oversee the procurement and management of the project, and as may be adjusted to a lesser amount based on the value of the resulting URS contract.

c) Changes to Expenditure of STATE money. Award money is to be spent in accordance with the CONTRACTOR's approved budget. Changes to the use of STATE money is prohibited without the prior approval of HTA.

d) Payments Not Final Acceptance. Progress or interim payments shall not be construed as final acceptance of any activity or service required under this Contract. The CONTRACTOR acknowledges and agrees to perform all the activities and services in accordance with this Contract for the total sum of money not to exceed **NINE MILLION FOUR HUNDRED NINE THOUSAND ONE HUNDRED TWELVE AND NO/100 DOLLARS (\$9,409,112.00)**, tax inclusive, as specified above, and subject to the availability of funds.

e) Invoice Receipt Date. Official invoice date is the date that the invoice and all deliverables are received and accepted by the HTA. All required deliverables must be attached to the invoice at the time of receipt. Invoices must be signed by Contractor in blue ink. Invoices submitted without all of the necessary deliverables will not be accepted and will have to be resubmitted. Fiscal year ends June 30 and entails the temporary shutdown of fiscal processes. Invoices received at the change of fiscal, between June 1 and July 31, may be subject to delays in processing.

f) Hawai'i Certificate of Vendor Compliance. Notwithstanding any provision or representation to the contrary, no initial or final payment shall be paid to CONTRACTOR by HTA without a current Certificate of Vendor Compliance, which verifies CONTRACTOR's compliance with the requirements adopted by the Internal Revenue Service, Hawai'i Department of Taxation, the Hawai'i Department of Commerce and Consumer Affairs, and the Hawai'i Department of Labor & Industrial Relations.

g) Availability of Funds. The CONTRACTOR acknowledges and agrees that the availability of funds from the Tourism Special Fund, established under the laws of the State of Hawai'i for any fiscal year (July 1 to June 30), shall initially be subject to the passage of a budget appropriation of public funds by the Legislature, and subsequently, to the approval of an allotment of the budgeted funds by the Governor, through the Director of Finance, State of Hawai'i. If there are insufficient funds appropriated, allotted, or otherwise made available to the STATE to pay the CONTRACTOR under this CONTRACT, the STATE may, without any liability to the STATE, including consequential damages, reduce and amend the contracted amount of compensation previously payable to the CONTRACTOR, upon written notification by the STATE to the CONTRACTOR and amendment of this CONTRACT.

**[END OF ATTACHMENT 2. "TIME OF PERFORMANCE" FOLLOWS ON NEXT PAGE.]**

**TIME OF PERFORMANCE**

a) This contract starts on June 30, 2021 and ends **May 31, 2023**. Complete and satisfactory performance of all the activities, services, terms, and conditions required to be provided and performed by the CONTRACTOR under this Contract shall commence on the EFFECTIVE DATE and said activities and services shall be completed by May 31, 2023, unless this Contract is sooner amended or terminated as provided herein and in the attached General Conditions.

b) Options: The STATE shall have the sole and absolute discretion to exercise options to extend the term of this Contract and the time of performance provided herein by up to two (2) 15 month terms, with a possible end date of **November 30, 2025**.

c) Extensions: The STATE, at its sole discretion, may amend this Contract to extend the time of performance of any current term of the contract, for up to a maximum of six (6) months, at which point the contract shall end. Any request from CONTRACTOR to extend the time of performance shall be in the form of a written request, which shall be dated and received by the STATE no later than one hundred twenty (120) days prior to the end date of this Contract. The STATE may exercise an option or an extension, but not both.

**[END OF ATTACHMENT 3. THE "SPECIAL PROVISIONS" FOLLOW ON NEXT PAGE.]**

**SPECIAL PROVISIONS**

1. Coordination of Services by the State. Paragraph No. 1 of the attached General Conditions is amended to read as follows:

- a. The President and Chief Executive Officer of the Hawai'i Tourism Authority is the head of the purchasing agency ("HOPA"). A designee assigned by the HOPA will coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract.
- b. The CONTRACTOR will maintain communications with the assigned designee 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.

2. Hawai'i Compliance Express. Paragraph No. 2i of the attached General Conditions is further clarified as follows: The current "designated certification process" is Hawai'i Compliance Express. In lieu of presenting the separate certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, as outlined in Paragraphs 2e, 2g, and 2h, the CONTRACTOR shall obtain and provide the HTA with a current Certificate of Vendor Compliance from the Hawai'i Compliance Express that is current within six months of the start of the contract prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the Certificate of Vendor Compliance as required for final payment under section 103-53, HRS, as amended, and Paragraph 17 of these General Conditions.

3. Conflicts of Interest. Paragraph No. 5 of the attached General Conditions is further clarified as follows: CONTRACTOR acknowledges and agrees that it has represented to HTA, and HTA has justifiably relied upon such representation, that CONTRACTOR is duly authorized, by law and in equity, to conduct the PROJECT described in the PROPOSAL under the trade name or other name commonly understood for the PROJECT. CONTRACTOR shall avoid all conflict of interests that will not prevent and deter fraud, waste, and abuse, or will not provide increased economy to maximize, to the fullest extent practicable, the purchasing value of public funds. Any credible and reliable proof of such conflict of interest shall be cause to terminate this Contract and withhold any payment to CONTRACTOR.

4. Ownership Rights and Copyright. Paragraph No. 26 of the attached General Conditions, is not applicable to this CONTRACT and is hereby deleted. This deletion is further clarified as follows: Notwithstanding any provision or representation to the contrary, STATE shall not be deemed to have acquired any legal or equitable claim of ownership to the PROJECT, including any activity, service, event, or program related to the PROJECT, and due to funds provided by STATE to CONTRACTOR under this Contract. CONTRACTOR acknowledges and agrees that STATE has justifiably relied upon CONTRACTOR's prior representation and proof of ownership of the PROJECT that CONTRACTOR has complete and full legal and equitable ownership and title to the PROJECT, including any activity, service, event, or program related to the PROJECT; and, that based upon CONTRACTOR's representation that it is legally and equitably authorized to conduct the PROJECT, STATE has provided funds to CONTRACTOR to conduct the PROJECT. STATE may withhold payment or terminate this CONTRACT upon credible and reliable evidence that CONTRACTOR does not have full legal and equitable ownership or title to the PROJECT.

5. Limited License to Use Intellectual Property. The STATE hereby grants to the CONTRACTOR, a non-exclusive limited license during the time of performance for this Contract only, as provided in Attachment 3 herein, to use any designated intellectual property, including any domain name, trade

name, service mark, tag line, or logo (hereinafter referred to cumulatively as “Licensed Property”), which is owned, copyrighted, registered, patented, or reserved by the HTA, for the purpose of promoting and marketing Hawai‘i as a visitor destination and in a manner consistent with the “Hawai‘i Tourism Authority Five-Year Strategic Plan 2016,” incorporated herein by reference, and with any other brand management plans. The CONTRACTOR covenants and agrees that its use of the Licensed Property shall be of high standards and of high quality, style, and appearance and that CONTRACTOR shall, at all times, maintain, increase, or enhance the goodwill associated with the Licensed Property. The CONTRACTOR shall not authorize, assign or grant any interest in the Licensed Property without the STATE’s prior written consent.

6. Conflict Resolution. Notwithstanding any provisions or representations to the contrary, any conflict among the various provisions of this Contract shall be resolved by allowing the various provisions in the following documents, in order of priority, to control:

1. Hawai‘i law; then
2. This Contract and Attachments 1 to Attachment 4, as modified, amended, or changed in writing; then
3. The General Conditions, attached hereto and incorporated herein; then
4. The CONTRACTOR’s budget approved by STATE; then
5. The RFP, as amended; then
6. The accepted PROPOSAL; then
7. Course of conduct; then
8. Course of dealing; then
9. General principles of government contracting; then
10. Visitor Industry marketing practices.

7. Environmental Sustainability. CONTRACTOR shall use its best efforts to incorporate and implement the “green” practices into the various activities and events related to the PROJECT and as specifically described in Section III of the RFP entitled “Environmental Sustainability.”

8. Authentic and Accurate Representation. CONTRACTOR shall use its best efforts to incorporate and implement authentic and accurate representations that would perpetuate and promote the uniqueness and integrity of the Native Hawaiian culture and community. CONTRACTOR shall utilize the HTA “Style & Resource Guide” to provide guidance regarding facts about the Hawaiian islands, properly depicting Hawaiian sites and culture, and sharing insights into promoting Hawai‘i sensitively and safely.

9. Technical Assistance Programs. CONTRACTOR shall attend HTA mandated training on contracting, invoicing, or other relevant topics, as well as capacity-building workshops and seminars. Capacity-building workshops and seminars are subject to fees. These fees are the responsibility of the CONTRACTOR and may not be paid for with HTA funds.

10. Force Majeure. As parties to this CONTRACTOR, neither HTA nor CONTRACTOR shall be responsible or liable, or deemed in breach hereof, for a delay in the performance of their respective obligations and responsibilities under this CONTRACT due solely to a Force Majeure Event beyond its reasonable control; provided that the party experiencing the Force Majeure Event shall exercise due diligence in endeavoring to overcome any Force Majeure Event that impedes its performance, *and to mitigate costs where possible*. Upon the occurrence of a Force Majeure Event, the non-performing party shall be excused from any further performance or observance of the affected obligation(s) only for as long as such circumstances prevail and such party continues to use its best efforts to recommence

performance or observance whenever and to whatever extent possible without delay. Any party so delayed in its performance will immediately notify the other by telephone or by the timeliest means otherwise available (to be confirmed in writing within two (2) calendar days after the inception of such delay) and describe in reasonable detail the circumstances causing such delay. (As used in this CONTRACT, "Force Majeure Event" means any occurrence beyond the reasonable control of a party, including, without limitation, acts of God; act of terrorism; war; embargo; national emergency; insurrection or riot; acts of the public enemy; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; or unusually severe weather or other natural disasters.)

11. Execution in Counterparts. This Contract may be executed in one (1) or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.

**[END OF ATTACHMENT 4. THE "GENERAL CONDITIONS" FOLLOW ON NEXT PAGE.]**

GENERAL CONDITIONS

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## GENERAL CONDITIONS

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

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

3. Personnel Requirements.

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

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

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

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

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

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

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

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

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

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

- (1) Cancel the stop performance order; or
  - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
  - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

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

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

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

14. Termination for Convenience.

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

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

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

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

- d. Compensation.

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

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

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

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

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

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

- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.

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

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

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

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

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

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

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
  - b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
  - c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.
17. Payment Procedures; Final Payment; Tax Clearance.
- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
  - b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
  - c. Prompt payment.
    - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
    - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
  - d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.
18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.
19. Modifications of Contract.
- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
  - b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.



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

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

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

21. Price Adjustment.

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

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

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

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

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

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
  - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
  - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

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

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

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

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

d. Termination for Cause. In addition to any other remedies provided 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.