SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES AND THE STATE OF HAWAII

I. INTRODUCTION

1. On June 16, 2005, the United States notified the State of Hawaii officials of its intent to investigate conditions of mental health care provided to detainees at the Oahu Community Correctional Center ("OCCC"), a correctional facility in Honolulu, Hawaii, pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997.

2. In October 2005, the United States Department of Justice ("DOJ") toured OCCC with consultants in the field of correctional mental health services.

3. Throughout the course of the investigation, the DOJ received complete cooperation and access to OCCC and documents from the State of Hawaii.

4. On March 14, 2007, the DOJ issued a Findings Letter pursuant to CRIPA, 42 U.S.C. § 1997(a)(1), which concluded that certain conditions at OCCC violated the constitutional rights of detainees of the jail.

5. This Settlement Agreement resolves all claims asserted in United States v. State of Hawaii, et al., Civil No. _____ (D. Hawaii)(hereafter "Lawsuit" or "Litigation"), which relates to DOJ's investigation of conditions of mental health care provided to detainees at the OCCC.

6. The Defendants in the Lawsuit were the State of Hawaii; Governor of Hawaii, Linda Lingle; the Department of Public Safety, Clayton Frank, Director; and the Oahu Community Correctional Center, Nolan Espinda, Warden; (collectively referred to as "the State").

7. The State shall take all actions necessary to substantially comply with the provisions of this Settlement Agreement.

8. This Settlement Agreement is not intended to have any preclusive effect. Should the issue of the preclusive effect of this Settlement Agreement be raised in any proceeding, the parties agree to certify that this Settlement Agreement was intended to have no such preclusive effect. Further, if the Settlement Agreement is introduced in a proceeding as between the United States and the State, evidence shall not be admitted as to the State's compliance or noncompliance with the Settlement Agreement and nothing in the Settlement Agreement shall be relevant to the required constitutional standards. The State does not concede that the terms in this Settlement Agreement are constitutionally mandated and reserves all rights in this regard.

9. This Settlement Agreement is not intended to impair, expand, or create a right of any person or organization to seek relief against the State, or its officials, employees, or agents for their conduct or the conduct of State employees; accordingly,

this Settlement Agreement does not alter legal standards governing any such claims, including those under Hawaii law.

10. Nothing in this Settlement Agreement shall prevent the State from modifying or closing OCCC or from developing alternative placements for the detainees currently at OCCC.

11. This Settlement Agreement resolves the CRIPA investigation conducted by the DOJ and addresses the corrective measures set forth by the DOJ in its March 14, 2007 Findings Letter to the State ("Findings Letter").

12. In conformity with CRIPA, this Settlement Agreement represents a voluntary effort by the State to address the alleged constitutional violations raised by the DOJ's investigation. See CRIPA, 42 U.S.C. §§ 1997b(a)(2)(B); 1997g.

13. This Settlement Agreement is binding upon the parties, by and through their officials, agents, employees, and successors. No person or entity is intended to be a third party beneficiary of the provisions of this Settlement Agreement for purposes of any action whatsoever, including but not limited to civil, criminal, or administrative actions, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Settlement Agreement in any action whatsoever. Similarly, this Settlement Agreement does not authorize, nor shall it be construed to authorize, access to

State documents by persons or entities not a party to this Settlement Agreement.

14. This Settlement Agreement shall constitute the entire integrated Settlement Agreement of the parties. No prior contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provisions herein in this Litigation or in any other proceeding.

15. Since the DOJ initiated the investigation and issued the Findings Letter, the State has made progress in remedying several of the alleged constitutional violations. The parties agree that it is in their mutual interests to avoid litigation. The parties further agree that resolution of this matter pursuant to this Settlement Agreement is in the best interests of the parties and the detainees of OCCC.

16. All parties shall bear their own costs, including attorneys' fees, related to the DOJ's investigation of OCCC, the Lawsuit, and any subsequent related proceeding.

17. The signatures below of officials representing the DOJ and the State signify that these parties have given their final approval to this Settlement Agreement.

18. This Settlement Agreement shall take effect on the day the United States District Court for the District of Hawaii enters an Order granting the Joint Motion for Stipulated

Conditional Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1).

II. DEFINITIONS

19. "OCCC" shall refer to the Oahu Community Correctional Center, a state-owned and operated correctional facility, as well as to any facility that is built, leased, or otherwise used, to replace any portion of the Oahu Community Correctional Center.

20. "DOJ" shall refer to the United States Department of Justice, which represents the United States in this matter.

21. "Effective date" shall mean the date that the United States District Court for the District of Hawaii enters an Order granting the Joint Motion for Stipulated Conditional Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1).

22. "Detainee" shall be construed broadly to refer to one or more individuals detained at, or otherwise housed, held, in the custody of, or confined at either OCCC or any facility that is built or used to replace OCCC or any part of OCCC.

23. "Consistent with generally accepted professional correctional standards of care" shall refer to action undertaken by a qualified professional that is substantially aligned with contemporary, accepted professional judgment, practice, or standards of a correctional facility.

24. "Adequate" shall mean that level of service required for compliance with the Constitution.

25. "Quality Assurance" means a system of self-audit and improvement to assess the implementation and effectiveness of remedies instituted pursuant to this Settlement Agreement, to identify deficits that may exist, and to effectuate new measures to cure deficits identified.

26. "Qualified Mental Health Professional" shall mean an appropriately qualified physician, psychiatrist, psychologist, counselor, therapist, social worker, or nurse who is competent, whether by education, training, licensure, or experience, to make the particular decision, or deliver the particular service, at issue.

27. "Therapeutic lockdown" means the use of long-term seclusion as an alternative to generally accepted professional correctional standards of mental health care and treatment, in which a detainee is isolated in his or her cell and denied any staff interaction, including contact with mental health staff.

28. A detainee is "seriously mentally ill" if the detainee is objectively suffering from a mental illness which significantly impairs the detainee's mental health functioning.

29. When the term "individualized" is used to modify seclusion, it means the seclusion of a particular detainee, as opposed to the seclusion of a group of detainees or the lockdown of a module for security purposes.

30. "Suicide Watch" means any level of precaution,