

STATE OF HAWAII
DEPARTMENT OF HEALTH
HONOLULU

July 5, 2016

University of Hawaii
2440 Campus Road, Box 368
Honolulu, Hawaii 96822

Dear Contractor:

The attached finalized copy of our agreement

ASO LOG NO. 17-058

is for your information and files.

Sincerely,

A handwritten signature in black ink, appearing to read "Janis A. Morita", written in a cursive style.

JANIS A. MORITA
Chief
Administrative Services Office

c: CAMHD



STATE OF HAWAII
CONTRACT FOR GOODS AND SERVICES
 (IN THE FOLLOWING CATEGORIES: EXEMPT; SMALL PURCHASE;
 SOLE SOURCE; OR EMERGENCY)

This Contract, executed on the respective dates indicated below, is effective as of

July 1, 2016, between Department of Health,
(Insert name of state department, agency, board or commission)
 State of Hawaii ("STATE"), by its Director of Health,
(Insert title of person signing for State)
 (hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")),
 whose address is 1250 Punchbowl Street, Honolulu, Hawaii 96813
and University of Hawaii
 ("CONTRACTOR"), a Body corporate and the State University
(Insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the Contractor)
 under the laws of the State of Hawaii, whose business address and federal
 and state taxpayer identification numbers are as follows: 2440 Campus Road, Box 368
Honolulu, Hawaii 96822; FEIN: 99-6000354

RECITALS

A. The STATE is in need of the goods and services, or both, described in this Contract and its attachments. The CONTRACTOR is agreeable to providing the goods and services, or both, as the case may be.

B. This Contract is for (check one box):

(1) A procurement expenditure of public funds for goods or services, or both, that is otherwise exempt from public bidding as set forth in section 103D-102, Hawaii Revised Statutes ("HRS"), and chapter 3-120, Hawaii Administrative Rules ("HAR"); or
103D-102(b)(2)(G), HRS ; or

(2) A small purchase procurement of goods or services, or both, as set forth in section 103D-305, HRS, and subchapter 8, chapter 3-122, HAR; or

(3) A sole source procurement of goods or services, or both, as set forth in section 103D-306, HRS, and subchapter 9, chapter 3-122, HAR; or

(4) An emergency procurement of goods or services, or both, as set forth in section 103D-307, HRS, and subchapter 10, chapter 3-122, HAR.

C. Money is available to fund this Contract pursuant to:

(1) Item E-14, Act 119, 2015 HSL 315 as Amended by Act _____, 2016 HSL _____
(Identify state sources)

or (2) CMHS Grant No. 3B09SM010015-15S3
(Identify federal sources)

or both, in the following amounts: State \$ 379,494.00
 Federal \$ 220,000.00

D. Pursuant to Sections 334-2.5, 334-3, 334-8 HRS, the STATE
(Legal authority to enter into this Contract)
 is authorized to enter into this Contract.

E. The agency's Chief Procurement Officer is Sarah Allen
 who has approved this procurement or is not required to approve this procurement.

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 services performed, or both, under this Contract in a total amount not to exceed FIVE HUNDRED NINETY-NINE THOUSAND, FOUR HUNDRED NINETY-FOUR AND NO/100 DOLLARS (\$ 599,494.00), including 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. Time of Performance. The services or goods required of the CONTRACTOR under this Contract shall be performed and completed in accordance with the Time of Performance set forth in Attachment-S3, which is made a part of this Contract.

4. Bonds. The CONTRACTOR is required to provide or is not required to provide: a performance bond, a payment bond, a performance and payment bond in the amount of Not Applicable DOLLARS (\$ 0.00).

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

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made a part of this Contract. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of Not Applicable DOLLARS (\$ 0.00) per day, in accordance with the terms of paragraph 9 of the General Conditions.

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

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

STATE

Virginia Pressler
(Signature)

Virginia Pressler, M.D.
(Print Name)

Director of Health
(Print Title)

June 29, 2016
(Date)

CONTRACTOR

CORPORATE SEAL

(If available)

UNIVERSITY OF HAWAI'I

(Name of Contractor)

Y Yaa-Yin Fong
(Signature)

YAA-YIN FONG
(Print Name)

Director - Office of Research Services
(Print Title)

6/17/16
(Date)

APPROVED AS TO FORM:

William G. Lu

Deputy Attorney General

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



STATE OF HAWAII

CONTRACTOR'S STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

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

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

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

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

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

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

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

CONTRACTOR

By _____ (Signature)
Print Name _____
Print Title _____
Name of Contractor _____
Date _____



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The University of Hawaii, Department of Psychology ("CONTRACTOR"), in concert with the State of Hawaii's Department of Health Child and Adolescent Mental Health Division ("DIVISION"), shall provide research, evaluation, clinical, and training services to the DIVISION. The CONTRACTOR shall also provide qualified staff and resources that shall assist the DIVISION in meeting its research, evaluation, clinical, and training needs.

The CONTRACTOR, with the concurrence of the DIVISION's Administrator, shall:

- I. Provide to the DIVISION the following personnel:
 - A. One (1) full-time equivalent ("FTE") Doctor of Philosophy ("PhD") level Researcher/Evaluator located on DIVISION's premises. The Researcher/Evaluator shall engage primarily in data analysis and information modeling for programs and services evaluation, communication, and strategic clinical and program outcomes and improvement.
 - B. One (1) FTE Report Writer located on DIVISION's premises. The Report Writer shall design, develop, and refine methods of storing, extracting, and presenting data to answer both standardized and customized specific questions and queries from systems and databases including, but not limited to, the DIVISION's Electronic Health Record ("EHR"), and reporting database systems. The Report Writer shall use data to formulate, evaluate, adjust, improve, and make recommendations for enhancing information and models which address clinical and administrative questions for the DIVISION at large.



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- C. One (1) FTE EHR/Testing and Development Specialist ("EHRTDS") located on DIVISION's premises. The EHRTDS shall be integrated into and supervised by the DIVISION's Health Systems Management Office ("HSMO") section for Information Technology ("IT") support and shall assist the DIVISION's HSMO IT team in design, development, and configuration of information system modules, sub-systems, and sub-functions. The EHRTDS must have experience in information systems development and programming.
- D. One (1) point five (.50) FTE Research and Evaluation Graduate Assistant ("REGA") who shall help the DIVISION's Research and Evaluation and Training ("RET") team complete various data analysis programs and tasks. The REGA shall be trained and supervised by the CONTRACTOR.
- E. A total of point five (.50) FTE Mental Health Graduate Trainees ("MHGT") to deliver clinical services, numbering four (4) individuals in Fiscal Year ("FY") 2017 and three (3) individuals in FY 2018 and subsequent Contract years. The MHGTs shall be trained and supervised by the CONTRACTOR's clinical staff, in the delivery of clinical services for DIVISION youth. The primary services of the MHGTs shall be mental health treatment, mental health assessments, and associated services mutually agreed upon by CONTRACTOR and DIVISION.
- F. One (1) point three five (.35) FTE Clinical Supervisor. The Clinical Supervisor shall oversee all aspects of the training and supervision of the



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CONTRACTOR's MHGTs including, but not be limited to, professional training, clinical supervision, oversight, appropriate credentialing with DIVISION, and health insurance plans, as applicable.

- G. CONTRACTOR's faculty consultation and support to provide team leadership, team and project oversight, project management, and direction to DIVISION.

II. Provide to the DIVISION the following services:

- A. Research, Evaluation, Testing, and Analysis services which shall be primarily provided by the Researcher/Evaluator, Report Writer, and REGA.

The CONTRACTOR shall:

1. Provide consultation, data analysis, and reporting to DIVISION regarding clinical program reports, surveys, quality indicators, and outcomes, inclusive of the Provider Feedback Survey.
2. Organize and present findings from the DIVISION's clinical services, annual DIVISION Reports, and other major evaluations to DIVISION leadership, DIVISION clinicians and staff, Department of Health ("DOH") leadership forums, and additional forums mutually agreed upon by CONTRACTOR and DIVISION.
3. Organize and present DIVISION's research and evaluation information products to the broader community and respond to requests for information and reports regarding the DIVISION's



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- data systems, principally for clinical program outcomes improvement.
4. Participate in and provide data-based guidance to the DIVISION's Outcome Assessment Workgroup which is part of the DIVISION's Data Taskforce.
 5. Develop DIVISION's Annual Report with DIVISION personnel.
 6. Provide data analysis and results for DIVISION's part of the Hawaii Youth Interagency Performance Report ("HYIPR") and similar joint data management and reporting meetings and initiatives.
 7. Provide support and consultation to DIVISION's Planner on data for Block Grant reporting as well as to grant project staff (e.g., Planning and Implementation Grants, special projects).
 8. Participate in data initiatives for research, program evaluation, and consultation with state and national stakeholders (e.g. DIVISION, Substance Abuse and Mental Health Services Administration ("SAMHSA")).
 9. Provide CONTRACTOR's faculty consultation and support for evaluation of clinical services and CONTRACTOR team leadership for DIVISION on clinical and data analysis efforts.
 10. Design, implement, and evaluate clinical practice tools (e.g. Ohio Scales, Monthly Treatment and Progress Summary ("MTPS")),



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Child and Adolescent Functional Assessment Scale ("CAFAS")) to enhance successful implementation of measurement tools and enhanced outcomes from the DIVISION's Model.

11. Continue working with DIVISION's Clinical Leads regarding information product development, testing, implementation, and refinement of the MTPS, Ohio Scales, CAFAS, and other quality and outcome assessment metrics.
 12. Manage and conduct DIVISION's Consumer Satisfaction Surveys ("CSS") and ensure that all DIVISION's CSS meet federal requirements for satisfaction data.
 13. Actively support development, writing, and evaluation of System Of Care Grants ("SOCG") within DIVISION and across other DOH Divisions including, but not limited to, developing needs assessment for grant applications, designing evaluation plans, conducting, consulting on or supervising evaluations, and all necessary reporting, supporting clinical activities with clinical practice tools and feedback reports.
- B. Data and Information Architecture Design, Modeling, and Development services which shall be primarily provided by the Report Writer and the EHRTDS and the research team, as needed.

The CONTRACTOR shall:



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1. Create and implement new reporting objects for general DIVISION applications and SOCGs to ensure that system-wide efficiencies are developed and maintained from such grants (e.g. use SOCGs to pilot effective use of client level data in treatment decision making).
2. Assist in the restructuring of existing DIVISION databases and information repositories to improve reliability and accessibility for end-users within the DIVISION and associated Providers.
3. Collaboratively revise with the DIVISION HSMO IT team system document structures such as the Coordinated Services Plan ("CSP"), Mental Health Treatment Plan ("MHTP"), and MTPS to enhance documentation of DIVISION youth goals, progress per therapeutic contact, care metrics, and outcomes of services.
4. Participate and coordinate with the DIVISION's HSMO and RET teams on development and implementation of new state-of-the-art reporting formats and analytical information system products including, but not limited to, streamlining and improving system design for DIVISION end-user information dashboards and reports for clinical and programmatic decision-making from multiple data sources, and obtaining user feedback, testing, and modifying versions, as needed.



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5. Prepare DIVISION and other summary reports by procuring, extracting, and transforming data and report information from data systems.
 6. Develop, maintain, and update reports and system functions for data use in case management planning, case review, utilization review, administrative and billing program reviews, outcome analysis, and custom reporting.
 7. Assist in organizing the design, development, and implementation of DIVISION information solutions for efficiently organizing diverse data for multiple DIVISION reports, so that routine and special analyses can be conducted efficiently and routinely on a multitude of structured data. This solution set is to incorporate the legacy Data Restructuring Tool and additional data analysis toolsets, for configurable, predictive data analysis.
- C. Data and Metrics Design for Clinical and Services Review and Information Products and Reporting Enhancements services which shall be primarily provided by the Researcher/Evaluator, Report Writer, REGA, and the EHRTDS, as needed.

The CONTRACTOR shall:

1. Help DIVISION's HSMO and Clinical Services Office ("CSO") design, develop, implement, and enhance clinical case review and utilization management reporting processes effectuated by



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- modernized IT systems. Assistance shall include planning and researching reporting items for ongoing DIVISION's HSMO communication with a variety of stakeholders including, but not limited to, branch level clinical leadership and central administration committees and workgroups. The development of unified clinical case review reporting and administrative reporting systems, with the incorporation of system services, patient, and care information shall be targeted as the primary goals to create standardization of clinical case review and utilization management processes across the DIVISION.
2. Assist DIVISION with the development of a quality strategy, inclusive of associated quality metrics design, reporting, coordination, and comprehensive program outcomes review planning activities.
 3. Assist with the development and implementation of a Uniform Utilization Review Process ("Utilization Review") across all the DIVISION's Family Guidance Centers ("FGC"). This clinical Utilization Review shall implement DIVISION standardization of processes and data metrics, and make use of redesigned information systems.
 4. Help DIVISION's HSMO IT team design, develop, and implement a user-friendly clinical feedback systems architecture that interacts



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with the EHR to integrate data from multiple sources, systems, and measures to improve the data reporting process between the Clinical Leads, Mental Health Supervisors, and Mental Health Care Coordinators at the DIVISION's FGCs and across the DIVISION. This clinical feedback system shall include, but not be limited to, dashboards and analytical reports with graphical interfaces displaying information on any given client, level of care, DIVISION's FGC, and Provider. The CONTRACTOR shall assist DIVISION with the development of these information structures and trend analyses for ongoing clinical assessment, treatment progress, care quality, and care outcome tracking. Structured data and metrics include, but are not limited to, the MTPS/Progress Notes, care quality and outcome indicators, Ohio Scales, and CAFAS scores. This shall allow DIVISION's Clinical Leads and affiliated Clinical Supervisors to quickly and routinely monitor individual client treatment and treatment progress, in the developing DIVISION Model. These metrics are to be deployed utilizing DIVISION information systems for dashboards and reports.

5. Assist DIVISION to develop and refine a framework for implementation of quality measures and indicators aligned to cycles of continuous improvement in the DIVISION Model. This is



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to utilize streamlined dashboards and clinical feedback reporting mechanisms towards enhancing youth services matched to evidence-based practice guidelines. This shall include the development of interpretation guides, reports, and benchmarks for feedback on DIVISION services.

6. Continue such efforts as the Provider Feedback Initiative, Data Party, and other initiatives to encourage DIVISION staff and Providers to use clinical, administrative, and quality data in decision making for their various roles.
7. Continue adjustments, research, and analysis of data reporting systems and procedures to map and maximize DIVISION's information maturity model and to use on care quality and outcomes, aligned to the DIVISION Model or DIVISION Process Model.
8. Manage data feedback projects, attend workgroups, and work closely with DIVISION's HSMO to develop, test, modify, and enhance DIVISION's HSMO and RET information and analytical systems, to increase DIVISION's overall information maturity for implementing evidence-based practices.
9. Enhance DIVISION's understanding and strategic planning with regards to national and state mental health systems and policy making.



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10. Facilitate and support transition of data and feedback reports to the new EHR and information systems architecture.
11. Assist in developing evaluation systems to maintain clinical Contract performance for DIVISION and its Providers and improve clinical services outcomes.
12. Provide routine data analysis for regular Clinical Case Reviews and Utilization Management ("UM") reports, and participate in DIVISION's UM meetings. The data analysis shall follow the framework of the DIVISION Model for clinical and administrative case management, billing, and oversight.
13. Assist in clinical and administrative database development for DIVISION's programs and sections, particularly for clinical services, clinical case review, billing review, quality assurance, outcome measurement, and monitoring.
14. Make necessary information structure and systems design revisions required for analyses of services utilization, codes, billing, and reimbursement as well as other updates requested within the DIVISION's data systems (e.g., revised electronic templates, MTPS, Progress Notes).
15. Develop with DIVISION's HSMO the necessary systems design changes and reporting data structure updates aligned to required services utilization and billing analyses, and planned organizational



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changes. This includes design and development of analytics solutions to enable meaningful data comparisons across time periods and so that the data system remains current, intact, and ready for future data utilization projects.

16. Participate in DIVISION electronic data interchange initiatives, not limited to system redesign activities for increasing the DIVISION utilization of EHR, information systems modernizations, and information exchanges.
17. Incorporate an Evidence-Based Services ("EBS") implementation initiative into systems and training, inclusive of CONTRACTOR participation in the DIVISION's EBS committee, and planning and implementation activities.

D. Clinical Services and Clinical Supervision services which shall include, but not be limited to, the provision, documentation, and supervision of clinical work for the Evaluation and Assessment ("Evaluations") and Intensive In-Home ("IIH") level services and shall be provided by the MHGTs under the administration and direction of the Clinical Supervisor and overall CONTRACTOR's faculty leadership for clinical services delivery and clinical direction.

The CONTRACTOR shall:



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1. Provide clinical services for patient initial and recurring Mental Health Evaluations, in accordance with the Child and Adolescent Mental Health Performance Standards ("CAMHPS").
2. Produce clinical documentation of all patient care to the DIVISION, including EHR or electronic system records of patient encounters in a specified progress note format as defined and made feasible by DIVISION.
3. Complete a minimum number of Evaluations per Contract year, including initial and repeat formal Mental Health Evaluations, Eligibility Evaluations, and/or Cognitive Evaluations, for use in DIVISION Support for Emotional and Behavioral Development ("SEBD") eligibility and care determinations.
 - a. The number of Evaluations shall be phased in over time, and dependent on DIVISION to refer adequate numbers of cases to CONTRACTOR.
 - b. The MHGTs shall each complete at a minimum twenty-six (26) Evaluations in FY 2017, and thirty (30) Evaluations in FY 2018 and subsequent Contract years.
 - c. Once services are electronically documented and correctly billed for insurer reimbursement, the Evaluation services provided to DIVISION youth performed by MHGTs under the clinical supervision of the Clinical Supervisor, may be



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- decreased so that each completes at a minimum twenty-two (22) Evaluations in FY 2017, and twenty-six (26) Evaluations in FY 2018 and subsequent Contract years.
- d. The Evaluations shall be conducted in accordance with service specifications of the DIVISION's CAMHPS, as applicable, and by service specifications mutually agreed upon by DIVISION and CONTRACTOR.
 - e. The Evaluations shall be provided to DIVISION's FGCs primarily via Telehealth equipment and services, which the DIVISION has provided and maintains for CONTRACTOR pursuant to this Contract.
 - f. The Evaluations may be via Telehealth and at CONTRACTOR's site or DIVISION's sites. The single process for administering these and the numbers of Evaluations may be adjusted by agreement between the DIVISION and CONTRACTOR, based on actual DIVISION assessment needs.
 - g. The CONTRACTOR shall return all Telehealth equipment to DIVISION upon modernizations and/or the termination of this Contract.
4. Provide DIVISION with ongoing IHH treatment services for a minimum of eleven (11) selected youth with five (5) or more cases



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open at any given time in FY 2017 and eight (8) youth with four (4) or more cases open at any given time in FY 2018 and subsequent Contract years. Such services shall be provided in accordance with the DIVISION's CAMHPS and dependent on DIVISION to refer adequate numbers of cases.

5. Provide IHH treatment services for DIVISION youth via Telehealth as a pilot project to assess the fidelity of treatment by remote means and shall be provided under a structured IHH Telehealth Services Project Plan, with youth consent, clinical controls, longitudinal data on care, and project metrics, in agreement with the DIVISION's Administrator.
6. Provide a recognized mental health training program with clinical supervision by the Clinical Supervisor.

The CONTRACTOR shall:

- a. Provide clinical patient services oversight, DIVISION's FGC clinical planning, services billing controls, and support for clinical services delivery for MHGTs, and associated patients, under the oversight of DIVISION's CSO.
- b. Provide all clinical supervision functions of the MHGTs, for all clinical and supervision activities, including DIVISION credentialing.



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- c. Maintain active DIVISION credentials as a Qualified Mental Health Professional ("QMHP") and provide clinical direction on all CONTRACTOR patient care.
7. Provide all patient services to DIVISION youth in alignment with all DIVISION's policies and standards for clinical services, supervision, and billing. Clinical services supervision standards, such as evaluations and associated coded services, are to meet DIVISION's CAMHPS and MedQuest Quest Integration Plan requirements for billing, as appropriate.
- E. Information systems, EHR, and IT services shall be provided by the EHRTDS working under the direction of the DIVISION's HSMO IT team.
The EHRTDS shall:
 1. Perform advanced application systems development and configuration tasks based on experience and advanced training in computer programming, structured development, and testing of complex information systems and/or EHR systems.
 2. Develop with DIVISION's HSMO IT team EHR, billing, and analytics application system components and participate in planning and configuration of EHR and systems interfaces, including, but not limited to, the integration of clinical information and added required documents into the EHR and other systems in



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- use by DIVISION for clinical, care coordination, billing, and administrative utilization.
3. Support the design, configuration development, testing, review, and maintenance of electronic system modules, for clinical and administrative operations and data entry into the EHR and other administrative systems.
 4. Provide detailed IT planning, project management, and application system development activities for the technical implementations of EHR, electronic workflow systems, data systems, processing clinical and billing transactions, and electronic clinical documentation.
 5. Provide EHR and other information systems operations and software support, with an emphasis on EHR, billing, and data system development and testing.
 6. Develop with the DIVISION's HSMO IT team the necessary systems coding design changes and reporting data structure updates aligned to required analyses and planned changes in billing codes and diagnostic specifications including creating programming so that updates in data can be meaningfully compared across time periods and so that the data system remains current, intact, and ready for future data utilization projects.



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7. Participate in the development of application coding and ensure that computer programming implementation and operations meet design specifications.
 8. Help DIVISION train DIVISION and Providers' staff on system revisions after updates and changes have been developed and incorporated into the electronic systems.
 9. Help DIVISION train clinical staff on data-driven decision making through the use of feedback reporting systems.
- III. Participate in all relevant DIVISION and CONTRACTOR confidentiality training and orientation and shall adhere to current policies, ethical standards, accreditation standards, and requirements.
- IV. Comply with applicable sections of the Federal Regulations, Hawaii Revised Statutes, and Hawaii Administrative Rules including, but not limited to, the following:
- A. Federal Regulations, 42 C.F.R Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records.
 - B. Section 325-101, Hawaii Revised Statutes, Confidentiality of Records and Information.
 - C. Section 334-5, Hawaii Revised Statutes, Confidentiality of Records.
 - D. Health Insurance Portability and Accountability Act ("HIPAA").
 - E. Family Educational Rights and Privacy Act ("FERPA").



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

In full consideration for the services performed by the CONTRACTOR under this Contract, the STATE agrees, subject to receipt of federal funds under the Federal Grant and subject to allotments to be made by the Director of Finance, State of Hawaii, pursuant to Chapter 37, Hawaii Revised Statutes, to pay to the CONTRACTOR a total sum of money not to exceed FIVE HUNDRED NINETY-NINE THOUSAND, FOUR HUNDRED NINETY-FOUR AND NO/100 DOLLARS (\$599,494.00), consisting of TWO HUNDRED TWENTY THOUSAND AND NO/100 DOLLARS (\$220,000.00) of federal funds to be received under the Federal Grant and THREE HUNDRED SEVENTY-NINE THOUSAND, FOUR HUNDRED NINETY-FOUR AND NO/100 DOLLARS (\$379,494.00) of state funds, which shall be paid in accordance with and subject to the following:

- a. Payments shall be made in monthly installments upon the monthly submission by the CONTRACTOR of invoices in triplicate for the services provided in accordance with Attachment – S1, “Scope of Services,” and in accordance with the costs identified in the Budget, attached hereto as Exhibit “A” and made a part hereof. The STATE shall withhold the last monthly installment until final settlement of this Contract.
- b. Monthly installments shall be made on a cost reimbursement basis. Invoices shall be accompanied by utilization data and expenditure reports for the billing month and certified by the CONTRACTOR to contain expenditures actually incurred for the services provided under this Contract.
- c. The expenditure reports shall be reviewed by the STATE and shall be subject to the STATE’s preliminary determination of appropriateness and allowability of the reported expenditures. The STATE’s preliminary determination of appropriateness and allowability of the reported expenditures shall be subject to later verification and subsequent audit.



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COMPENSATION AND PAYMENT SCHEDULE

- d. If an amount of reported expenditures is preliminarily determined by the STATE to be inappropriate and unallowable, the STATE may deduct an equivalent amount from the next payable installment and may withhold payment of the amount of moneys equivalent to the questioned expenditures until later resolution of the discrepancy by audit or other means. If, after payment of the last installment, investigation and examination reveal additional expenditures that are determined by the STATE to be inappropriate and unallowable, the STATE may require that an equivalent amount of moneys be refunded by the CONTRACTOR, notwithstanding the STATE's preliminary determination of appropriateness and allowability. An amount of moneys to be refunded by the CONTRACTOR may be offset against the amount of moneys withheld by the STATE in determining the amount of the final payment to be made to the CONTRACTOR in final settlement of this Contract. Final settlement of this Contract shall include submission and acceptance of all reports and other materials to be submitted by the CONTRACTOR to the STATE, resolution of all discrepancies in expenditures or performance of services, and completion of all other outstanding matters under this Contract.
- e. Allowable expenses for necessary travel authorized in advance by the STATE shall be determined in accordance with Chapter 10, titled "Travel Rules," of Title 3 of the Hawaii Administrative Rules, as administered and interpreted by the Department of Accounting and General Services, State of Hawaii.
- f. The Final Invoice shall be submitted within forty-five (45) days after the termination date of the Contract. No payment shall be made if invoices are not received by the STATE within forty-five (45) days after the termination date of the Contract.



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TIME OF PERFORMANCE

The CONTRACTOR shall provide the services required under this Contract from July 1, 2016, to and including June 30, 2017, unless this Contract is sooner terminated as hereinafter provided.

This Contract may be extended as provided in paragraph 5 of the Special Conditions, Attachment – S5.

CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

1. By Heads of Departments or Agencies as Delegated by the Director of Human Resources Development¹.

Pursuant to the delegation of the authority by the Director of Human Resources Development, I certify that the services 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”).

Virginia Pressler
(Signature)

June 29, 2016
(Date)

Virginia Pressler, M.D.
(Print Name)

Director of Health
(Print Title)

¹ This part of the form may be used by all department heads and others to whom the Director of Human Resources Development (DHRD) 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. **NOTE:** Authority to certify exemptions under §§ 76-16(2), 76-16(12), and 76-16(15), HRS, has not been delegated; only the Director of DHRD may certify §§76-16(2), 76-16(12), and 76-16(15) exemptions.

2. By the Director of Human Resources Development, State of Hawai‘i.

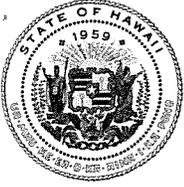
I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to §76-16, HRS.

(Signature)

(Date)

(Print Name)

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



STATE OF HAWAII
SPECIAL CONDITIONS

1. Deletion of Portions of Contract. For purposes of this Contract, paragraph 5 on page 2 of the Contract, "Standards of Conduct Declaration," together with the attached Standards of Conduct Declaration form are hereby deleted and the parties agree that paragraph 5 of the Contract and its attached form are not operative.
2. Deletion of General Conditions. For purposes of this Contract, the following General Conditions are hereby deleted from the General Conditions and have no operative effect between the parties:
 - a. Subparagraphs 2.b., 2.g., 2.h., and 2.i.
 - b. Subparagraph 19.h.
3. Modification of General Conditions. For purposes of this Contract, paragraphs 26 and 33 in the General Conditions are hereby modified to read as follows:
 - a. "26. Ownership Rights and Copyright. If the CONTRACTOR, or an employee or employees of the CONTRACTOR, obtains a copyright to any material, whether finished or unfinished, that is developed, prepared, assembled, or created pursuant to this Contract, the CONTRACTOR or its employees, as the case may be, shall own the copyright. The STATE may use the materials developed, prepared, assembled, or created pursuant to this Contract for any and all purposes, without restriction or charge. If neither the CONTRACTOR, nor any employee of the CONTRACTOR, before or by the date one year following the completion of the Contract, obtains a copyright to such material, the STATE may consider such material to be "works for hire," and in such circumstance, shall own the material and may copyright it. If the STATE owns the material or the copyright or both, the CONTRACTOR may use the material for any and all purposes without restriction or charge. The parties agree that upon the completion of this Contract, they will execute a document that recites the day they agree to as the completion date and that date shall be the date of completion for the purposes of this paragraph."
 - b. "33. Patented Articles. If the STATE due to no fault on its part, because of an error, oversight, or omission by the CONTRACTOR is charged with or has any action or claim brought against it for an infringement or other unauthorized or improper use of any patented article, patented process, or patented appliance received or used by the STATE under or as a result of this Contract, the CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE at no cost to the STATE any such infringement or improper or unauthorized use of which the STATE has been accused or has had a claim made or an action brought against it. Such corrections or cures may include, but are not limited to: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) payment of royalties or other payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing security to or making arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use."



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- c. Paragraph 14.c. pertaining to ownership and possessory rights to goods and work products in the event of termination of this Contract shall be subject to paragraph 26, as amended.
4. Equipment. If this Contract is terminated with cause or without cause or at the scheduled expiration of the time of performance specified in this Contract, all equipment and unused supplies and materials leased or purchased with funds paid to the CONTRACTOR under this Contract shall become the property of the STATE as it so specifies and shall be disposed of as directed by the STATE, except, if applicable, as otherwise may be provided under the Federal Grant.
5. Option to Extend Contract. Unless terminated, this Contract may be extended by the STATE for specified periods of time not to exceed five (5) years or for not more than five (5) additional twelve (12) month periods upon mutual agreement and the execution of a supplemental agreement. The Contract price may be adjusted at the beginning of each extension period and shall be subject to allotment and the availability of funds.

The STATE may terminate the extended contract at any time in accordance with General Conditions no. 14.

6. Federal Citation. Pursuant to the authority of Subparts I & III, B, Title XIX, Public Health Service Act 45 CFR Part 96, the Substance Abuse and Mental Health Services Administration of the Department of Health and Human Services of the United States has granted federal funds to the STATE under a Community Mental Health Services Grants program, Grant No. 3B09SM010015-15S3, for the budget period from 10/1/2014 through 09/30/2016, Catalog of Federal Domestic Assistance No. 93.958, which notice of award, grant application, and other applicable documents and conditions are hereinafter collectively referred to as the "Federal Grant."
7. Audit Requirements.
 - a. States, local governments, and nonprofit organizations that expend \$750,000 or more in a year of federal funds from any source shall have a single audit conducted for that year in accordance with the Single Audit Act Amendments of 1996, Public Law 104-156.
 - b. If the proceeding condition applies, the CONTRACTOR shall conduct a financial and compliance audit in accordance with the guidelines identified in Exhibit "B," attached hereto and made a part hereof. Failure to comply may result in the withholding of payments to the CONTRACTOR.
 - c. The schedule of the STATE's federal and state contracts received by the organization for the period covered by the financial statements shall be provided to the STATE upon request and as a supplemental attachment to the organization's A-133 audit report.
 - d. States, local governments, and nonprofit organizations that expend less than \$750,000 a year in federal funds are exempt from federal audit requirements for that year, however, records shall be available for review or audit by appropriate officials of the federal awarding agency, the STATE, or General Accounting Office.



STATE OF HAWAII
SPECIAL CONDITIONS

- e. If the CONTRACTOR is exempt from federal audit requirements in accordance with subparagraph c., above, the cost of any audit conducted on behalf of the CONTRACTOR shall not be charged to the federal portion of this Contract.
8. The CONTRACTOR shall comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §§794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
9. The CONTRACTOR shall comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104).
10. The CONTRACTOR shall comply with the requirements of the “Certifications (OMB Approval No. 0920-0428)” in Exhibit “C”, attached hereto and made a part hereof, and hereby acknowledges that it is a subgrantee of federal funds to be received under the Federal Grant.
11. Language Access. The CONTRACTOR shall comply, as a covered entity, with the provisions of chapter 321C, Hawaii Revised Statutes, regarding language access; and with federal law regarding language access, Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d et seq., and 45 CFR part 80. These laws require the CONTRACTOR to, among other things, ensure meaningful access to services, programs, and activities by providing clients with oral and written language services, including written translations of vital documents, if, on account of national origin, clients do not speak English as their primary language and have a limited ability to read, write, speak, or understand the English language. If it is necessary to provide oral or written language services to a client’s family in order for the client to benefit from the CONTRACTOR’s services, programs, or activities, the CONTRACTOR shall provide those language services to the family.
12. Business Associate Agreement. The CONTRACTOR is a “Business Associate of the State of Hawaii, Department of Health, Child and Adolescent Mental Health Division” as defined in 45 CFR Section 160.103. Therefore, the parties agree to the provisions as listed in Exhibit “D”.

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. CPO 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 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
- 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 11-205.5, 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.

BUDGET

July 1, 2016 to June 30, 2017

Budget Categories:	Budgeted Amount
A. Personnel Costs	\$ 523,032.00
B. Other Expenses	\$ 76,462.00
Total	\$ 599,494.00

Source of Funds:	S-16-214-H-2990-035202-00-720	\$220,000.00
	G-17-084-H-2990-556	\$379,494.00

Exhibit "A"

GUIDELINES FOR ORGANIZATION-WIDE AUDITS

Pursuant to the Single Audit Act Amendments of 1996, Public Law 104-156, the STATE is requiring A- 133 audits from subrecipients who expend \$750,000 or more of federal funds in a year.

The audits must be conducted in accordance with the following standards:

1. Generally accepted auditing standards issued by the American Institute of Certified Public Accountants.
2. Government Auditing Standards issued by the Comptroller General of the United States.
3. Office of Management and Budget (OMB) Circular A-133, "Audits of states, local governments, and nonprofit organizations," dated June 30, 1997.

The audits must be conducted on an annual basis and submitted to the STATE within nine (9) months after the end of the audit period.

The audit report shall include the following:

1. The organization-wide financial statements prepared in accordance with generally accepted accounting principles or other comprehensive basis of accounting.
2. A schedule of federal financial assistance in the format prescribed by the OMB Circular A-133.
3. A schedule of the STATE's federal and state contracts received by the organization for the period covered by the financial statements. This schedule shall contain the:
 - a. ASO Log Number.
 - b. Contract amount for the contract period.
 - c. Expenditures charged against the contract during the current audit period and the prior audit periods for expenditure-reimbursement contracts; or amounts of units billed against the contract during the current audit period and the prior audit periods for unit-cost contracts since inception.
4. Auditor's reports on the organization's financial statements, supplemental schedule of expenditures of federal awards, and supplemental schedule of federal and state contracts received by the organization from the STATE.
5. Report on Compliance and on Internal Control over Financial Reporting Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards.
6. Report on Compliance with Requirements Applicable to each Major Program and Internal Control over Compliance in Accordance with OMB Circular A-133.
7. Schedule of findings and questioned costs in the format prescribed in OMB Circular A-133.
8. Comments regarding prior year's findings.

Exhibit "B"

CERTIFICATIONS

1. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

The undersigned (authorized official signing for the applicant organization) certifies to the best of his or her knowledge and belief, that the applicant, defined as the primary participant in accordance with 45 CFR Part 76, and its principals:

- (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;
- (b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

Should the applicant not be able to provide this certification, an explanation as to why should be placed after the assurances page in the application package.

The applicant agrees by submitting this proposal that it will include, without modification, the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions" in all lower tier covered transactions (i.e., transactions with sub-grantees and/or contractors) and in all solicitations for lower tier covered transactions in accordance with 45 CFR Part 76.

2. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The undersigned (authorized official signing for the applicant organization) certifies that the applicant will, or will continue to, provide a drug-free workplace in accordance with 45 CFR Part 76 by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug-free awareness program to inform employees about--
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a) above;
- (d) Notifying the employee in the statement required by paragraph (a), above, that, as a condition of employment under the grant, the employee will--
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the agency in writing within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central

point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

- (f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d) (2), with respect to any employee who is so convicted--
- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

For purposes of paragraph (e) regarding agency notification of criminal drug convictions, the DHHS has designated the following central point for receipt of such notices:

Office of Grants and Acquisition Management
Office of Grants Management
Office of the Assistant Secretary for Management and Budget
Department of Health and Human Services
200 Independence Avenue, S.W., Room 517-D
Washington, D.C. 20201

3. CERTIFICATION REGARDING LOBBYING

Title 31, United States Code, Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," generally prohibits recipients of Federal grants and cooperative agreements from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a SPECIFIC grant or cooperative agreement. Section 1352 also requires that each person who requests or receives a Federal grant or cooperative agreement must disclose lobbying undertaken with non-Federal (non-appropriated) funds. These requirements apply to grants and cooperative agreements EXCEEDING \$100,000 in total costs (45 CFR Part 93).

The undersigned (authorized official signing for the applicant organization) certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the under-

signed, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. (If needed, Standard Form-LLL, "Disclosure of Lobbying Activities," its instructions, and continuation sheet are included at the end of this application form.)
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

4. CERTIFICATION REGARDING PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA)

The undersigned (authorized official signing for the applicant organization) certifies that the statements herein are true, complete, and accurate to the best of his or her knowledge, and that he or she is aware that any false, fictitious, or fraudulent statements or claims may subject him or her to criminal, civil, or administrative penalties. The undersigned agrees that the applicant organization will comply with the Public Health Service terms and conditions of award if a grant is awarded as a result of this application.

5. CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

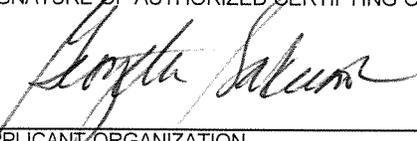
Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds. The law does not apply to children's services provided in private residence, portions of facilities used for inpatient drug or alcohol treatment, service providers whose sole source of applicable Federal funds is Medicare or Medicaid, or facilities where WIC coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing the certification, the undersigned certifies that the applicant organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The applicant organization agrees that it will require that the language of this certification be included in any subawards which contain provisions for children's services and that all subrecipients shall certify accordingly.

The Public Health Services strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL 	TITLE GEORGETTE SAKUMOTO Grants Specialist
APPLICANT ORGANIZATION University of Hawaii	DATE SUBMITTED MAY 17 2016

BUSINESS ASSOCIATE AGREEMENT

The STATE has determined that it is a Covered Entity or a Health Care Component of a Covered Entity under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), as amended, and its implementing regulations at 45 CFR parts 160 and 164 (the HIPAA Rules).

CONTRACTOR will provide to STATE certain services described in the Contract to which this Exhibit "D" is attached (the Contract), and may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under the Contract. To the extent CONTRACTOR needs to create, receive, maintain or transmit Protected Health Information to perform services under the Contract, it will be acting as a Business Associate¹ of STATE and will be subject to the HIPAA Rules and the terms of this Business Associate Agreement (this Agreement). CONTRACTOR is, therefore, referred to as "BUSINESS ASSOCIATE" in this Agreement.

In consideration of STATE's and BUSINESS ASSOCIATE's continuing obligations under the Contract, and the mutual agreements below, the parties agree as follows:

1. DEFINITIONS.

Except for terms otherwise defined herein, and unless the context indicates otherwise, any other capitalized terms used in this Agreement and the terms "person," "use," and "disclosure" are defined by the HIPAA Rules. A change to the HIPAA Rules that modifies any defined term, or which alters the regulatory citation for the definition, shall be deemed incorporated into this Agreement.

Breach² means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule or as provided for by this Agreement, which compromises the security or privacy of the PHI.

An acquisition, access, use, or disclosure of PHI in a manner not permitted by the Privacy Rule is presumed to be a breach unless the BUSINESS ASSOCIATE demonstrates to the STATE's satisfaction that there is a low probability that the PHI has been compromised based on a risk assessment that identifies at least the following: (i) the nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification; (ii) the unauthorized person who used the PHI or to whom the disclosure was made; (iii) whether the PHI was actually acquired or viewed; and (iv) the extent to which the risk to the PHI has been mitigated.

¹ Business Associate is defined at 45 CFR §160.103

² Breach: 45 CFR §164.402.

Breach excludes:

- A. Any unintentional acquisition, access or use of PHI by a Workforce member or person acting under the authority of the BUSINESS ASSOCIATE if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
- B. Any inadvertent disclosure by a person who is authorized to access PHI at the BUSINESS ASSOCIATE to another person authorized to access PHI at the same BUSINESS ASSOCIATE, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the Privacy Rule.
- C. A disclosure of PHI where the BUSINESS ASSOCIATE has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

Designated Record Set means records, including but not limited to PHI maintained, collected, used, or disseminated by or for the STATE relating to (i) medical and billing records about Individuals maintained by or for a covered Health Care Provider, (ii) enrollment, Payment, claims adjudication, and case or medical management records systems maintained by or for a Health Plan, or (iii) that are used in whole or in part by the STATE to make decisions about Individuals.³

Electronic Protected Health Information (EPHI) means PHI that is transmitted by Electronic Media or maintained in Electronic Media.⁴

HIPAA Rules shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and Part 164.

Individual means the person who is the subject of Protected Health Information, and shall include a person who qualifies as a personal representative under 45 CFR §164.502(g) of the HIPAA Rules.⁵

Privacy Rule means the HIPAA Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160, and part 164, subparts A and E.

Protected Health Information (PHI) means any oral, paper or electronic information, data, documentation, and materials, including, but not limited to, demographic, medical, genetic and financial information that is created or received by a Health Care Provider, Health Plan, Employer, or Health Care Clearinghouse, and relates to the past, present, or future physical or mental health or condition of an Individual; the provision of health care to an Individual; or the past, present, or future payment for the provision of health care to an Individual; and

³ Designated Record Set: 45 CFR §164.501.

⁴ Electronic Protected Health Information: 45 CFR §160.103

⁵ Individual: 45 CFR §160.103; 164.502(g)

that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual. For purposes of this Agreement, the term Protected Health Information is limited to the information created, maintained, received, or transmitted by BUSINESS ASSOCIATE on behalf of or from the STATE under the Contract. Protected Health Information includes without limitation EPHI, and excludes education records under 20 U.S.C. §1232(g), employment records held by the STATE as an employer, and records regarding an Individual who has been deceased for more than 50 years.⁶

Security Rule means the HIPAA Security Standards for the Protection of Electronic Protected Health Information at 45 CFR part 160, and part 164, subpart C.

Unsecured Protected Health Information or Unsecured PHI means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of technology or methodology specified by the Secretary under section 13402(h)(2) of Public Law 111-5.⁷

2. BUSINESS ASSOCIATE'S OBLIGATIONS.

BUSINESS ASSOCIATE agrees to:

- a. Not use or disclose PHI other than as permitted or required by this Agreement or as Required By Law. In no event may BUSINESS ASSOCIATE use or further disclose PHI in a manner that would violate the Privacy Rule if done by the STATE, except as expressly provided in this Agreement.⁸
- b. Implement appropriate safeguards, and comply, where applicable, with the Security Rule to ensure the confidentiality, integrity, and availability of all EPHI the BUSINESS ASSOCIATE creates, receives, maintains, or transmits on behalf of the STATE; protect against any reasonably anticipated threats or hazards to the security or integrity of EPHI; prevent use or disclosure of PHI other than as provided for by this Agreement or as Required by Law; and ensure compliance with the HIPAA Rules by BUSINESS ASSOCIATE's Workforce.⁹ These safeguards include, but are not limited to:
 - (i) Administrative Safeguards. BUSINESS ASSOCIATE shall implement policies and procedures to prevent, detect, contain, and correct security violations, and reasonably preserve and protect the confidentiality, integrity and availability of EPHI, as required by 45 CFR §164.308, and enforcing those policies and procedures, including sanctions for anyone not found in compliance;¹⁰

⁶ Protected Health Information: 45 CFR §160.103

⁷ Unsecured Protected Health Information: 45 CFR §164.402

⁸ 45 CFR §§164.502(a)(3), 164.504(e)(2)(ii)(A)

⁹ 45 CFR §164.306(a)

¹⁰ 45 CFR §164.308

- (ii) Technical and Physical Safeguards. BUSINESS ASSOCIATE shall implement appropriate technical safeguards to protect PHI, including access controls, authentication, and transmission security, as well as implement appropriate physical safeguards to protect PHI, including workstation security and device and media controls;¹¹ and
 - (iii) Training. BUSINESS ASSOCIATE shall provide training to relevant workforce members, including management, on how to prevent the improper access, use or disclosure of PHI; and update and repeat training on a regular basis.¹²
- c. In accordance with 45 CFR §164.316, document the required policies and procedures and keep them current, and shall cooperate in good faith in response to any reasonable requests from STATE to discuss, review, inspect, and/or audit BUSINESS ASSOCIATE's safeguards. BUSINESS ASSOCIATE shall retain the documentation required for six (6) years from the date of its creation or the date when it last was in effect, whichever is later.¹³
 - d. Ensure that any subcontractor of BUSINESS ASSOCIATE that creates, receives, maintains, or transmits PHI on behalf of BUSINESS ASSOCIATE agrees in writing to the same restrictions, conditions and requirements that apply to BUSINESS ASSOCIATE through this Agreement with respect to such PHI.¹⁴
 - e. Notify the STATE following discovery of any use or disclosure of PHI not permitted by this Agreement of which it becomes aware, or any Breach of Unsecured PHI.¹⁵
 - (i) BUSINESS ASSOCIATE shall immediately notify the STATE verbally.
 - (ii) BUSINESS ASSOCIATE shall subsequently notify the STATE in writing, without unreasonable delay, and in no case later than two (2) business days following discovery of the impermissible use or disclosure of PHI, or Breach of Unsecured PHI.
 - (iii) A Breach of Unsecured PHI shall be treated as discovered by the BUSINESS ASSOCIATE as of the first day on which such breach is known to the BUSINESS ASSOCIATE or, by exercising reasonable diligence, would have been known to the BUSINESS ASSOCIATE. BUSINESS ASSOCIATE shall be deemed to have knowledge of a Breach if the Breach is known, or by exercising reasonable diligence would have been known, to any person, other

¹¹ 45 CFR §§ 164.310, 164.312

¹² 45 CFR §164.308(a)(5)

¹³ 45 CFR §§164.306 – 164.316; 164.504(e)(2)(ii)(B)

¹⁴ 45 CFR §§164.308(b), 164.314(a)(2), 164.502(e), 164.504(e)(2)(ii)(D)

¹⁵ 45 CFR §§164.314(a)(2), 164.410(a), 164.504(e)(2)(ii)(C)

than the person committing the Breach, who is an employee, officer, or other agent of the BUSINESS ASSOCIATE.¹⁶

- f. Take prompt corrective action to mitigate, to the extent practicable, any harmful effect that is known to BUSINESS ASSOCIATE of a Security Incident or a misuse or unauthorized disclosure of PHI by BUSINESS ASSOCIATE in violation of this Agreement, and any other action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. BUSINESS ASSOCIATE shall reasonably cooperate with the STATE's efforts to seek appropriate injunctive relief or otherwise prevent or curtail potential or actual Breaches, or to recover its PHI, including complying with a reasonable corrective action plan.¹⁷
- g. Investigate such Breach and provide a written report of the investigation and resultant mitigation to STATE's DOH HIPAA Privacy and/or Security Officer within thirty (30) calendar days of the discovery of the Breach.
- h. Provide the following information with respect to a Breach of Unsecured PHI, to the extent possible, as the information becomes available, to the STATE's DOH HIPAA Privacy and/or Security Officer:
 - (i) The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by BUSINESS ASSOCIATE to have been accessed, acquired, used, or disclosed during the breach; and
 - (ii) Any other available information that the STATE is required to include in notification to the Individual under the HIPAA Rules, including, but not limited to the following:¹⁸
 - A. Contact information for Individuals who were or who may have been impacted by the HIPAA Breach (e.g., first and last name, mailing address, street address, phone number, and email address);
 - B. A brief description of the circumstances of the Breach, including the date of the Breach and date of discovery, if known;
 - C. A description of the types of Unsecured PHI involved in the Breach (such as whether the full name, social security number, date of birth, address, account number, diagnosis, diagnostic, disability and/or billing codes, or similar information was involved);

¹⁶ 45 CFR §164.410(a)(2)

¹⁷ 45 CFR §§164.308(a)(6); 164.530(f)

¹⁸ 45 CFR §§164.404(c)(1), 164.408, 164.410(c)(1) and (2)

- D. A brief description of what the BUSINESS ASSOCIATE has done or is doing to investigate the Breach, mitigate harm to the Individual(s) impacted by the Breach, and protect against future Breaches; and
 - E. Contact information for BUSINESS ASSOCIATE's liaison responsible for investigating the Breach and communicating information relating to the Breach to the STATE.
- i. Promptly report to STATE's DOH HIPAA Privacy and/or Security Officer any Security Incident of which BUSINESS ASSOCIATE becomes aware with respect to EPHI that is in the custody of BUSINESS ASSOCIATE, including breaches of Unsecured PHI as required by §164.410, by contacting the DOH HIPAA Privacy and/or Security Officer.¹⁹
 - j. Implement reasonable and appropriate measures to ensure compliance with the requirements of this Agreement by Workforce members who assist in the performance of functions or activities on behalf of the STATE under this Agreement and use or disclose PHI, and discipline such Workforce members who intentionally violate any provisions of these special conditions, which may include termination of employment.²⁰
 - k. Make its internal policies, procedures, books and records relating to the use and disclosure of PHI received from, or created or received by BUSINESS ASSOCIATE on behalf of, the STATE available to the Secretary of Health and Human Services or to STATE if necessary or required to assess BUSINESS ASSOCIATE's or the STATE's compliance with the HIPAA Rules. BUSINESS ASSOCIATE shall promptly notify STATE of communications with the U.S. Department of Health and Human Services (HHS) regarding PHI provided by or created by STATE and shall provide STATE with copies of any information BUSINESS ASSOCIATE has made available to HHS under this paragraph.²¹
 - l. Upon notice from STATE, accommodate any restriction to the use or disclosure of PHI and any request for confidential communications to which STATE has agreed in accordance with the Privacy Rule.²²
 - m. Make available PHI held by BUSINESS ASSOCIATE, which the STATE has determined to be part of its Designated Record Set, to the STATE as necessary to satisfy the STATE's obligations to provide an Individual with access to PHI under 45 CFR §164.524, in the time and manner designated by the STATE.²³
 - n. Make available PHI held by BUSINESS ASSOCIATE, which the STATE has determined to be part of its Designated Record Set, for amendment and incorporate any

¹⁹ 45 CFR §§164.314(a)(2), 164.410

²⁰ 45 CFR §§164.308(a), 164.530(b) and (e)

²¹ 45 CFR §504(e)(2)(ii)(I)

²² 45 CFR §164.522

²³ 45 CFR §§164.504(e)(2)(ii)(E), 164.524

amendments to PHI that the STATE directs or agrees to in accordance with 45 CFR §164.526, upon request of the STATE or an Individual.

- o. Document disclosures of PHI made by BUSINESS ASSOCIATE, which are required to be accounted for under 45 CFR §164.528(a)(1), and make this information available as necessary to satisfy the STATE's obligation to provide an accounting of disclosures to an Individual within two (2) business days notice by the STATE of a request by an Individual of a request for an accounting of disclosures of PHI. If an Individual directly requests an accounting of disclosures of PHI from BUSINESS ASSOCIATE, BUSINESS ASSOCIATE shall notify STATE's DOH HIPAA Privacy and/or Security Officer of the request within two (2) business days, and STATE shall either direct BUSINESS associate to provide the information directly to the Individual, or it shall direct that the information required for the accounting be forwarded to STATE for compilation and distribution to the Individual.²⁴
- p. Comply with any other requirements of the HIPAA Rules not expressly specified in this Agreement, as and to the extent that such requirements apply to Business Associates under the HIPAA Rules, as the same may be amended from time to time.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

BUSINESS ASSOCIATE may, except as otherwise limited in this Agreement:

- a. General Use and Disclosure: Create, receive, maintain or transmit PHI only for the purposes listed in the Contract and this Agreement, provided that the use or disclosure would not violate the HIPAA Rules if done by the STATE or violate the Minimum Necessary requirements applicable to the STATE.²⁵
- b. Limited Use of PHI for BUSINESS ASSOCIATE's Benefit. Use PHI received by the BUSINESS ASSOCIATE in its capacity as the STATE's BUSINESS ASSOCIATE, if necessary, for the proper management and administration of the BUSINESS ASSOCIATE or to carry out the legal responsibilities of the BUSINESS ASSOCIATE. BUSINESS ASSOCIATE's proper management and administration does not include the use or disclosure of PHI by BUSINESS ASSOCIATE for Marketing purposes or for sale of PHI.²⁶
- c. Limited Disclosure of PHI for BUSINESS ASSOCIATE's Benefit. Disclose PHI for BUSINESS ASSOCIATE's proper management and administration or to carry out its legal responsibilities only if the disclosure is Required By Law, or BUSINESS ASSOCIATE obtains reasonable assurances from the person to whom PHI is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies

²⁴ 45 CFR §§164.504(e)(2)(ii)(G) and (H), 164.528; HAR ch. 2-71, subch. 2.

²⁵ 45 CFR §§164.502(a) & (b), 154.504(e)(2)(i)

²⁶ 45 CFR §§164.502(a)(5)(ii), 164.504(e)(2)(i)(A), 164.504(e)(4)(i), 164.508(a)(3) and (a)(4)

BUSINESS ASSOCIATE of any instances of which it is aware in which the confidentiality of PHI has been breached.²⁷

- d. Minimum Necessary. BUSINESS ASSOCIATE shall only request, use, and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use, or disclosure.²⁸
- e. Data Aggregation. Use PHI to provide Data Aggregation services relating to the STATE's Health Care Operations as permitted by 45 CFR §164.504(e)(2)(i)(B).
- f. Disclosures by Whistleblowers: Disclose PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1).

4. STATE'S OBLIGATIONS.

- a. STATE shall not request BUSINESS ASSOCIATE to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by STATE.
- b. STATE shall not provide BUSINESS ASSOCIATE with more PHI than is minimally necessary for BUSINESS ASSOCIATE to provide the services under the Contract and STATE shall provide any PHI needed by BUSINESS ASSOCIATE to perform under the Contract only in accordance with the HIPAA Rules.

5. TERM AND TERMINATION.

- a. This Agreement shall be effective as of the date of the Contract or Contract amendment to which this Agreement is attached, and shall terminate on the date the STATE terminates this Agreement or when all PHI is destroyed or returned to STATE.
- b. In addition to any other remedies provided for by this Agreement or the Contract, upon the STATE's knowledge of a material Breach by BUSINESS ASSOCIATE of this Agreement, the BUSINESS ASSOCIATE authorizes the STATE to do any one or more of the following, upon written notice to BUSINESS ASSOCIATE describing the violation and the action it intends to take:
 - (i) Exercise any of its rights to reports, access and inspection under this Agreement or the Contract;
 - (ii) Require BUSINESS ASSOCIATE to submit a plan of monitoring and reporting, as STATE may determine necessary to maintain compliance with this Agreement;
 - (iii) Provide BUSINESS ASSOCIATE with a reasonable period of time to cure the Breach, given the nature and impact of the Breach; or

²⁷ 45 CFR §164.504(e)(4)(ii)

²⁸ 45 CFR §164.502(b)

- (iv) Immediately terminate this Agreement if BUSINESS ASSOCIATE has breached a material term of this Agreement and sufficient mitigation is not possible.²⁹

c. Effect of Termination.³⁰

- (i) Upon any termination of this Agreement, until notified otherwise by the STATE, BUSINESS ASSOCIATE shall extend all protections, limitations, requirements and other provisions of this Agreement to all PHI received from or on behalf of STATE or created or received by BUSINESS ASSOCIATE on behalf of the State, and all EPHI created, received, maintained or transmitted by BUSINESS ASSOCIATE on behalf of the STATE.
- (ii) Except as otherwise provided in subsection 5(c)(iii) below, upon termination of this Agreement for any reason, BUSINESS ASSOCIATE shall, at the STATE's option, return or destroy all PHI received from the STATE, or created or received by the BUSINESS ASSOCIATE on behalf of, the STATE that the BUSINESS ASSOCIATE still maintains in any form, and BUSINESS ASSOCIATE shall retain no copies of the information. This provision shall also apply to PHI that is in the possession of subcontractors or agents of BUSINESS ASSOCIATE. BUSINESS ASSOCIATE shall notify the STATE in writing of any and all conditions that make return or destruction of such information not feasible and shall provide STATE with any requested information related to the STATE's determination as to whether the return or destruction of such information is feasible.
- (iii) If the STATE determines that returning or destroying any or all PHI is not feasible or opts not to require the return or destruction of such information, the protections of this Agreement shall continue to apply to such PHI, and BUSINESS ASSOCIATE shall limit further uses and disclosures of PHI to those purposes that make the return or destruction infeasible, for so long as BUSINESS ASSOCIATE maintains such PHI. STATE hereby acknowledges and agrees that infeasibility includes BUSINESS ASSOCIATE's need to retain PHI for purposes of complying with its work product documentation standards.

6. MISCELLANEOUS.

- a. Amendment. BUSINESS ASSOCIATE and the STATE agree to take such action as is necessary to amend this Agreement from time to time for compliance with the requirements of the HIPAA Rules and any other applicable law.
- b. Interpretation. In the event that any terms of this Agreement are inconsistent with the terms of the Contract, then the terms of this Agreement shall control. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Rules, as amended, the HIPAA Rules shall control. Where provisions of this

²⁹ 45 CFR §164.504(e)(2)(iii)

³⁰ 45 CFR §164.504(e)(2)(ii)(J)

Agreement are different than those mandated in the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this Agreement shall control. Any ambiguity in this Agreement shall be resolved to permit STATE to comply with the HIPAA Rules. Notwithstanding the foregoing, nothing in this Agreement shall be interpreted to supersede any federal or State law or regulation related to confidentiality of health information that is More Stringent than the HIPAA Rules.

- e. ~~Indemnification.~~ BUSINESS ASSOCIATE shall defend, indemnify, and hold harmless the STATE and STATE's officers, employees, agents, contractors and subcontractors to the extent required under the Contract for incidents that are caused by or arise out of a Breach or failure to comply with any provision of this Agreement or the HIPAA Rules by BUSINESS ASSOCIATE or any of BUSINESS ASSOCIATE's officers, employees, agents, contractors or subcontractors.
- d. Costs Related to Breach. BUSINESS ASSOCIATE shall be responsible for damages or injury arising out of this Agreement caused by its agents, officers, and its employees in the course of their employment, to the extent that BUSINESS ASSOCIATE's liability for such damage or injury has been determined by a court or otherwise agreed to by BUSINESS ASSOCIATE, and BUSINESS ASSOCIATE shall pay for such damages and injury to the extent permitted by law.³¹
- e. Response to Subpoenas. In the event BUSINESS ASSOCIATE receives a subpoena or similar notice or request from any judicial, administrative or other party which would require the production of PHI received from, or created for, the STATE, BUSINESS ASSOCIATE shall promptly forward a copy of such subpoena, notice or request to the STATE to afford the STATE the opportunity to timely respond to the demand for its PHI as the STATE determines appropriate according to its state and federal obligations.
- f. Survival. The respective rights and obligations of STATE and BUSINESS ASSOCIATE under sections 5.c., Term and Termination, ~~6.e., Indemnification,~~ and 6.d., Costs Related to Breach, shall survive the termination of this Agreement.
- g. Notices: Whenever written notice is required by one party to the other under this Agreement, it should be mailed, faxed and/or e-mailed to the appropriate address noted below. If notice is sent by e-mail, then a confirming written notice should be sent by mail and/or fax within two (2) business days after the date of the e-mail. The sender of any written notice required under this Agreement is responsible for confirming receipt by the recipient.

³¹ 45 CFR §164.530(f)

DAVID Y. IGE
GOVERNOR OF HAWAII



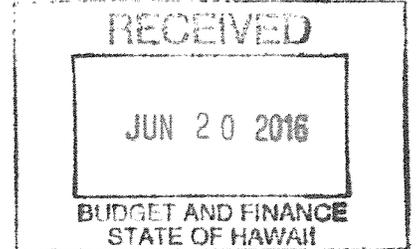
VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

In reply, please refer to:
File

B+F 4061
S: 6/27/16

June 14, 2016



TO: The Honorable David Y. Ige
Governor of Hawaii

THRU: The Honorable Wesley K. Machida, Director
Department of Budget and Finance

FROM: Virginia Pressler, M.D., Director of Health
Department of Health

SUBJECT: Request for Approval to Contract for Staffing Resources

Your approval is respectfully requested pursuant to Executive Memorandum No. 15-03 to enter into a contract to provide the following staffing resource:

1. Staffing Resource to be Provided

The Child and Adolescent Mental Health Division ("CAMHD") is planning to enter into a new contract with the University of Hawaii, Department of Psychology ("UH") wherein the UH shall continue to provide psychological services including research, evaluation, clinical, staffing, and training to the CAMHD currently being provided under an expiring contract between the CAMHD and the UH.

2. Description of Functions and Responsibilities

The CAMHD provides mental health services to eligible youth ages three (3) through twenty (20) who have a qualifying diagnosis and severe functional impairment. These services are the single MedQUEST carve-out service array for treatment of youth with serious emotional and behavioral disturbances. This safety net care serves youth who lack access to other mental health treatment options. In order to provide additional clinical services, clinical research, and clinical metrics information for data-driven decision-making, the CAMHD requires the services of the UH. This is to bolster internal capacity by providing clinical expertise on use of information for evidence-based treatment, through the research programs of the UH.

3. Justification for the Procurement of the Staffing Resource

The CAMHD has determined that the most effective approach to designing data feedback mechanisms that incorporate national research into behavioral health

treatment is to contract with the UH for these specialized resources. The clinical expertise with a research focus specializing in adolescent mental health evidence-based-practices that is provided cannot be performed in-house. These services require multiple dedicated researchers who are specialists in youth behavioral health clinical services, measurement, national literature, and establishment and monitoring of comparative behavioral health benchmarks. This collaboration with the UH permits the CAMHD to focus on efficient management and delivery of emotional and behavioral health services for at-risk youth.

The specialized youth-focused clinical research services provided in this contract are beyond the CAMHD's current workload and capacity. These contracted resources with the UH for finding the most effective national clinical research on evidence-based-practices, and proposing methods for incorporation of this into metrics and evaluation of services, are beyond the CAMHD's current capacity at this time. These specialized research-focused services could not be performed by the CAMHD staff and greater expertise is available utilizing the strengths of the UH. The CAMHD currently has vacancies in several clinical positions directly serving youth, and has historically found greater difficulties in recruiting clinical staff with a research focus.

4. Impact of Not Contracting for these Services

If the CAMHD does not receive approval to contract for these mental health services, the health, safety, and welfare of children and adolescents with emotional and behavioral challenges, and their families shall be put at risk. These clinical resources support the theoretical approach to the CAMHD services, and ensure that national evidence-based practices, clinical measurement, clinical oversight and associated information are incorporated in treatment. Absent these services, the identification of service issues and continuous improvements of the CAMHD treatment of youth with behavioral conditions would be severely constrained. It would be highly unlikely the CAMHD could continue supporting all current services to youth without this contract. As a result, increases in adverse health outcomes for children and adolescents with severe behavioral needs would be expected, increasing burdens on keiki, families, child welfare services, and the courts.

5. Program ID/Title

- a. Division/Branch/Section: Child and Adolescent Mental Health Division
- b. The Cost of the Contract for Fiscal Year 2017 is \$599,494.00 with the option to extend the Contract for not more than five (5) additional years.

FY2017: \$599,494.00
FY2018: \$599,494.00

The Honorable David Y. Ige
Request for Approval to Contract for Staffing Resources
June 14, 2016
Page 3

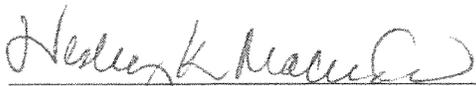
FY2019: \$599,494.00
FY2020: \$599,494.00
FY2021: \$599,494.00
FY2022: \$599,494.00

These estimated payments are subject to the services performed, contract extensions by mutual agreement and the execution of supplemental agreements, the receipt of federal funds under the Federal Grant, and allotments to be made by the Director of Finance, State of Hawaii.

- c. Source of Funds: G-17-084-H-2990-556 \$379,494.00
S-16-214-H-2990-035202-00-720 \$220,000.00
- d. Means of Financing: General Funds
Federal Funds

RECOMMEND:

APPROVAL DISAPPROVAL

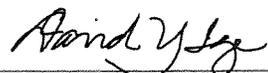


WESLEY K. MACHIDA
Director of Finance

6/27/16

Date

APPROVED DISAPPROVED



DAVID Y. IGE
Governor, State of Hawaii

Jun 28, 2016

DATE