

TIME OF PERFORMANCE

This contract shall be effective for the THIRTY-SIX month period commencing on August 1, 2021, or on the commencement date stated on the Notice to Proceed, whichever is later, and subject to the availability of funds beyond June 30, 2022. Unless terminated, this contract may be extended for two additional twelve month periods, upon mutual written consent, and subject to the availability of funds.

***** END OF SECTION *****
(TIME OF PERFORMANCE)
(PSD 21-ID/MB-28)

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(PSD 21-ID/MB-28)

COMPENSATION AND PAYMENT SCHEDULE**A. COMPENSATION**

The Provider shall be compensated during the initial twelve month period of the thirty-six month contract, the approximate amount of FIFTY MILLION, SIX HUNDRED, SEVENTY THOUSAND, THIRTY AND NO / 100 DOLLARS (\$50,670,030.00) based upon the per diem rate of \$81.66/per inmate, 1,700 inmates, and 365 days. The estimated total contract amount for the thirty-six month period is One Hundred, Fifty-Two Million, Ten Thousand, Ninety and No/100 Dollars (\$152,010,090.00).

1. Payment to the Provider shall be made on the, per diem rate per inmate as authorized by each purchase order issued against this contract for the estimated period stated on the purchase order.

Subject to legislative appropriations, on July 1 of each contract year, beginning July 15, 2022, the basic daily fee shall increase by 2.0% or by the previous year's Consumer Price Index for all Urban Consumers, West Region (CPI-U West Region) as prepared by the United States Bureau of Labor Statistics (available at <http://data.bls.gov/cgi-bin/survey/most?cu>), whichever is greater, but not to exceed 3%. Baseline of the May 2021 index is 285.793, the per diem for the first year shall be \$81.66. Approved adjustments of the per diem shall be by supplemental agreement.

This agreement shall be effective for the thirty-six month period commencing from July 01, 2021 up to June 30, 2024, or the start date stated on the Notice to Proceed, whichever is later. Unless terminated, the contract may be extended for not more than two (2) additional twelve-year period or parts thereof, upon mutual agreement in writing and subject to the availability of funds.

2. The daily per diem rates shall include all costs associated with the carrying out of the terms of this Contract, including treatment services. Treatment services shall include personal counseling, educational services, substance abuse treatment, vocational programming and all inmate services as specified in this Contract.

3. The Provider shall provide all health, dental and vision care to inmates at no additional cost to the State except for the following reimbursable expenses: services requiring hospitalization that includes physician reimbursement, services/procedures requiring anesthetics other than Novocain or similar local anesthetics or nitrous oxide that includes physician or anesthesiologist reimbursement, major surgical and other invasive procedures that includes physician reimbursement and any procedure requiring the use of special limited-use equipment not available at the facility. Of these reimbursable services, the Provider shall pay one hundred percent (100%) of the reimbursable expenses up to two thousand dollars (\$2,000) per incident. The State shall pay one hundred percent (100%) of the reimbursable expenses in excess of that amount for any single incident, except as provided in paragraph below.

The State shall not be responsible for health care, any illness or injuries, or any cost incurred while an Inmate is on escape status or resulting from the negligence or fault of the Provider or the Provider's employees or agents.

4. The State shall be responsible for medication or regimens specifically aimed at the treatment of conditions associated with AIDS/HIV and Hepatitis C, provided that the Provider follows State protocols for treatment. Routine medical care for inmates who have Hepatitis C or AIDS or are HIV positive are the responsibility of the Provider.

5. The State shall be responsible for the cost of immunizations under Section 16(k);

6. The State shall be responsible for the cost of preventive screening under Section 16(l);

7. If an Inmate with visual acuity 20/50 or worse does not have sufficient funds to pay for corrective eyeglasses, the Provider shall provide the eyeglasses at the State's expense provided that the State approves of the purchase and the Inmate agrees in writing to reimburse the State for the cost. In such cases, the eyeglasses shall be limited to a small number of basic generic styles;

8. In the event that an inmate is hospitalized for cancer treatment and such hospitalization exceeds five (5) consecutive calendar days then beginning on the sixth (6) calendar day, the State shall be responsible for the costs of the security during the hospital confinement and shall reimburse the Provider for the security rate of \$36.66 per hour per officer; and

9. In the event that an Inmate is hospitalized for any reason other than cancer treatment and such hospitalization exceeds fourteen (14) consecutive calendar days then beginning on the fifteenth (15) calendar day, the STATE shall be responsible for the costs of the security during the hospital confinement and shall reimburse the PROVIDER for half of the security rate of \$36.66 per hour per officer;

10. The STATE shall reimburse the PROVIDER for Inmate pay/workline wages consistent with the current workline pay scale in Hawaii's correctional facilities;

11. The STATE shall be responsible for the costs on Inmate transportation in accordance with Scope of Services, Section 5; and

12. If the PROVIDER charges any other entity a per diem for the provision of the exact same services set out herein at the facility that is lower than specified in this Exhibit, the Provider agrees to notify the State of such, and will, upon request of the State, agree to amend this Contract to reduce the State's per diem to the lower per diem amount on the same day the lower fee becomes effective for the other entity under similar terms and conditions contained in the other entity's contract;

B. INVOICING & PAYMENT

1. The Provider shall submit original copies of the following invoices:

- 1) Housing Per Diem Invoice
- 2) Medical Services and HIV/HEP C Invoices
- 3) Workline Wages Invoice

2. Original invoices shall be mailed to:

State of Hawaii
Department of Public Safety
Mainland & FDC Branch
1177 Alakea Street
Honolulu, HI 96813

Attn: Mainland Branch Administrator

All invoices shall reference the contract number (PSD 21-ID/MB-28) and solicitation number. If any invoices are sent via Federal Express, please call the PSD Mainland Branch Administrator.

3. Pursuant to Section 103-10, Hawaii Revised Statutes, the State of Hawaii shall have up to 30 calendar days after receipt of the original invoice to make payment. A facsimile copy shall not serve as the original copy. The State will take all reasonable steps to effect payment to the Provider by wire transfer. All payments shall be made in accordance with and subject to Chapter 40, Hawaii Revised Statutes.

All wire payments shall be made through First Hawaiian Bank

To: CITIZENS COMMERCIAL BANKING
Riverside, RI
ROUTING: 011500120
SWIFT BIC: CTZIUS33
ACCOUNT: #140320551
RE: CORECIVIC INC

4. Final Payment Requirements. The Provider is required to submit a tax clearance certificate for final payment on the contract. A tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract.

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").



(Signature)

Aug 11, 2021

(Date)

Max N. Otani

(Print Name)

Director

(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)

SPECIAL CONDITIONS

In the event of any conflict between the Special Conditions and any other provision of this Agreement, the Special Conditions shall govern. In case of conflict between the RFP and the General Conditions, the terms specified in the RFP shall govern. In case of a conflict between the resultant contract and the General Conditions, the contract shall govern.

A. No Third-Party Beneficiary Enforcement. It is agreed that enforcement of the terms and conditions of this Contract, and all rights of action relating to such enforcement, shall be strictly reserved to the State and the Provider, and nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other person on this Contract. The State and the Provider intend that any entity, other than the State or the Provider receiving services or benefits under this Contract, shall be deemed an incidental beneficiary only.

B. Publicity. The following supercedes General Conditions, Section 6.2:

The Provider shall not refer to the State, or any office, agency, or officer thereof, including the PSD, or to the services provided under this Contract, in any of the Provider's brochures, advertisements, or other publicity of the Provider, except that the Provider may disclose the actual fact that the Provider has a current contract to house Inmates with the State. This language will not be embellished by Provider in any form or fashion. All media contacts to the Provider about the Inmates or this Contract shall be referred to the State. The Provider shall not be authorized to release publicity concerning Inmates. Requests for personal histories or photographs of Inmates or information concerning their arrival or departure or permission to interview or photograph Inmates shall be referred to the PSD's Mainland Branch.

Directory information (i.e. Name, SID, Facility location of Saguaro) may be given directly to the press by the PROVIDER. The PROVIDER may photograph Inmates as a means of identification for official use or for dissemination to law enforcement officials or the press in the event an Inmate escapes from the facility. Nothing herein shall preclude the Provider from capturing any Inmate on videotape provided the videotape is used for security, penological, or law enforcement purposes.

C. Termination. The following supercedes General Conditions, Section 4.2, 4.3 and 4.4:

1.) The State shall have the right to terminate this Contract at any time should the State's funding be substantially cut or such funds are not appropriated or are unavailable for any reason. The State must give written notice of its intent to terminate this Contract no later than ninety (90) calendar days prior to the effective date of termination. Within ninety (90) calendar days after receipt of said notice, the State shall accept custody of its Inmates at the Daniel K. Inouye International Airport (HNL) or any other mutually agreed upon location, and transportation costs shall be paid by State. Any termination under this section shall not give rise to any claim for damages by the Provider.

2.) The State shall have the right to terminate this Contract immediately where the State determines that the Provider has failed to satisfactorily fulfill in a timely or proper manner any of the Provider's obligations under this Contract, or fails to perform any of the promises, terms, or conditions of this Contract. The State must provide the Provider with written notice of such claimed breach described in particularity, and the Provider is allowed 30 days in which to cure such alleged breach after receipt of such written notice. If the breach cannot be cured within 30 days after such notice but the breach can be cured through an on-going effort on the part of the Provider, the Provider may, within the 30-day period following notice of the breach, submit a plan for curing the breach within a reasonable time. If the plan is approved by the State, and such approval shall not be unreasonably withheld, the State shall not pursue remedies hereunder as long as the Provider timely undertakes to cure the breach in accordance with the approved plan. If after 30 days, or other mutually agreed upon time, the Provider is unable to cure the breach, the Provider, at its own expense, shall return the Inmates to the custody of the State at the Daniel K. Inouye International Airport (HNL), or any other location in the United States as determined by the State.

3.) The State may terminate this Contract without statement of cause at any time by giving written notice to the Provider of such termination within 90 calendar days before the effective date of termination.

4.) The Provider may terminate this Contract without statement of cause at any time by giving written notice to the State of such termination at least 180 calendar days before the effective date of termination.

5.) Upon termination of this Contract, the Provider shall, within 60 calendar days of the effective date of termination, compile and submit to the State a final accounting of the work performed up to the date of termination.

6.) If this Contract is terminated for cause, the Provider shall not be relieved of liability to the State for damages sustained because of any breach by the Provider of this Contract. In such event, the State may retain any amounts, which may be due and owing to the Provider until such time as the exact amount of damages due to the State from the Provider has been determined. The State may also set off any damages so determined against the amounts retained. The State retains its right to sue for damages.

7.) The Provider shall have the right to terminate this Contract for the State's non-payment of invoices by giving written notice to the State of such termination no later than 60 days before the effective date of termination. After receipt of such written notification of termination, the State is allowed 30 calendar days in which to cure the alleged non-payment of invoices. Any dispute as to the amount of the alleged non-payment owed the Provider shall be resolved in accordance with Section E, Disputes. A dispute as to the amount of non-payment owed the Provider alone is not grounds for termination of this Contract if the disputed monies are either placed in escrow or are paid without any waiver of the State's rights under Paragraph F, Refund Payments for Services or Expenditures Not Authorized. In the event of a termination under this paragraph, the State shall be responsible for all costs of transportation related to the return of the Inmates to the Daniel K. Inouye International Airport (HNL) or any other location determined by the State.

D. Personnel Requirements.

1.) The Provider shall secure, at the Provider's own expense, all personnel required to perform this Contract.

- 2.) The Provider shall ensure that its 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.
- 3.) The Provider shall conduct a thorough background check, including a criminal history record check, prior employment and educational history, on each prospective employee and on prospective contractors and subcontractors, to assure that all persons hired or contracted to perform services under this Contract are suitable and qualified for employment in the Facility.
- 4.) The Provider shall provide its employees with pre-service and in-service training in accordance with ACA Standards.
- 5.) The Provider shall maintain a personnel file for each employee that contains records of the background investigation, dates of employment, training received, annual performance appraisals, disciplinary actions, commendations, licenses and certifications for professional employees, and related records. Personnel files shall be made available to the PSD's Mainland Branch upon request. When reviewing such files, the State shall strictly follow privacy and confidential rights.

E. Disputes.

- 1.) No dispute arising under this Contract may be sued upon by the Provider until after the Provider's written request to the State to informally resolve the dispute is rejected, or until 90 calendar days after the State's receipt of the Provider's written request. The Provider agrees to proceed diligently with the provision of services provided herein unless otherwise directed in writing by the State.
- 2.) No dispute arising under this Contract may be sued upon by the State until after the State's written request to the Provider to informally resolve the dispute is rejected, or until 30 calendar days after the Provider's receipt of the State's written request subject to the provisions of Section E, subsection 2.

F. Refund Payments for Services or Expenditures Not Authorized.

The CONTRACTOR agrees to refund all payments received from the STATE for any service or expenditure which were not authorized by the STATE or made pursuant to the terms of this Contract. The STATE may deduct an equivalent amount from the next payable installment due and may withhold payment of the amount of monies equivalent to the questioned services or expenditures until later resolution of the discrepancy. If after payment of the last installment, investigation and examination reveal additional services or expenditures that are determined by the STATE to be inappropriate and unallowable, the STATE may require that an equivalent amount of monies be refunded to the STATE notwithstanding the STATE's preliminary determination of appropriateness and allow ability.

G. Force Majeure. Neither party shall be held responsible for delays or failures in performance resulting from acts beyond the reasonable control of such party and which could not have been avoided by the exercise of due care.

H. Failure to Perform. The inability of the Provider to provide necessary personnel shall not be an acceptable reason for failure to complete any services required by this Contract. Failure to perform services shall be deemed to be a total failure to deliver service, entitling the State to terminate this Contract.

I. Facsimile and Electronic Copy. This Contract may be executed and transmitted by facsimile or other electronic means. Facsimile or electronic signatures shall be acceptable and effective to the same extent as original signatures, and shall be deemed the original of the Contract.

J. The following changes are made for this agreement:

1) Section 1.4, Page 2 of the General Conditions:

Insurance Requirements are superceded to:

The Provider shall maintain in full force and effect during the life of this contract, liability and property damage insurance to protect the Provider and his subcontractors, if any, from claims for damages for personal injury, accidental death and property damage which may arise from operations under this contract, whether such operations be by himself or by an subcontractor or anyone directly or indirectly employed by either of them. If any subcontractor is involved in the performance of the contract, the insurance policy or policies shall name the subcontractor as additional insured.

As an alternative to the Provider providing insurance to cover operations performed by a subcontractor and naming the subcontractor as additional insured, Provider may require subcontractor to provide its own insurance which meets the requirements herein. It is understood that a subcontractor's insurance policy or policies are in addition to the Provider's own policy or policies.

The following minimum insurance coverage(s) and limit(s) shall be provided by the Provider, including its subcontractor(s) where appropriate.

Coverage	Limits
Commercial General Liability (occurrence form)	\$10,000,000 per year aggregate amount. \$ 2,000,000 for each person for each occurrence for bodily injury and property damage.
Products—Complete Operations Aggregate	
Comprehensive Automobile Liability	BI: \$ 2,000,000 per person for each occurrence. PD: \$ 500,000 for each occurrence.
Professional Liability	\$10,000,000 for each occurrence.

The Commercial General Liability insurance policy required of the Provider, including any subcontractor's policy, shall contain the following clauses:

1. "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."
2. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire selection term, including all extended periods if exercised.

The Provider agrees to deposit with the State of Hawaii certificate(s) of insurance necessary to satisfy the State that the insurance provisions of this agreement have been complied with and to keep such insurance in effect and the certificate(s) therefor on deposit with the State during the entire term of this agreement, including those of its subcontractor(s), where appropriate. Upon request by the State, Provider shall be responsible for furnishing a copy of the policy or policies.

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

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

2) The following replaces the paragraph in Section 3.2, Page 4 of the General Conditions:

"No right or interest pursuant to this agreement shall be assigned or delegated by the Provider without the prior written permission of the State. However, the Provider is authorized to subcontract with any individual or entity for the performance of the Provider's obligations hereunder provided each such subcontractor agrees to be bound by all applicable provisions of this Contract. The Provider acknowledges it will not by the act of subcontracting be absolved or released from any obligations under this Contract. Notwithstanding the foregoing, Provider may assign this Agreement to any of its wholly owned subsidiaries."

*****END OF SECTION*****
(SPECIAL CONDITIONS)
(PSD 21-ID/MB-28)

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**GENERAL CONDITIONS FOR HEALTH & HUMAN SERVICES CONTRACTS
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GENERAL CONDITIONS FOR HEALTH & HUMAN SERVICES CONTRACTS

1. Representations and Conditions Precedent

1.1 Contract Subject to the Availability of State and Federal Funds.

1.1.1 State Funds. This Contract is, at all times, subject to the appropriation and allotment of state funds, and may be terminated without liability to either the PROVIDER or the STATE in the event that state funds are not appropriated or available.

1.1.2 Federal Funds. To the extent that this Contract is funded partly or wholly by federal funds, this Contract is subject to the availability of such federal funds. The portion of this Contract that is to be funded federally shall be deemed severable, and such federally funded portion may be terminated without liability to either the PROVIDER or the STATE in the event that federal funds are not available. In any case, this Contract shall not be construed to obligate the STATE to expend state funds to cover any shortfall created by the unavailability of anticipated federal funds.

1.2 Representations of the PROVIDER. As a necessary condition to the formation of this Contract, the PROVIDER makes the representations contained in this paragraph, and the STATE relies upon such representations as a material inducement to entering into this Contract.

1.2.1 Compliance with Laws. As of the date of this Contract, the PROVIDER complies 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 PROVIDER's performance of this Contract.

1.2.2 Licensing and Accreditation. As of the date of this Contract, the PROVIDER holds all licenses and accreditations required under applicable federal, state, and county laws, ordinances, codes, rules, and regulations to provide the Required Services under this Contract.

1.3 Compliance with Laws. The PROVIDER 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 PROVIDER's performance of this Contract, including but not limited to the laws specifically enumerated in this paragraph:

1.3.1 Smoking Policy. The PROVIDER shall implement and maintain a written smoking policy as required by Chapter 328K, Hawaii Revised Statutes (HRS), or its successor provision.

1.3.2 Drug Free Workplace. The PROVIDER shall implement and maintain a drug free workplace as required by the Drug Free Workplace Act of 1988.

1.3.3 Persons with Disabilities. The PROVIDER shall implement and maintain all practices, policies, and procedures required by federal, state, or county law, including but not limited to the Americans with Disabilities Act (42 U.S.C. §12101, et seq.), and the Rehabilitation Act (29 U.S.C. §701, et seq.).

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

1.4 Insurance Requirements. The PROVIDER shall obtain from a company authorized by law to issue such insurance in the State of Hawai'i commercial general liability insurance ("liability insurance") in an amount of at least TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) coverage for bodily injury and property damage resulting from the PROVIDER's performance under this Contract. The PROVIDER shall maintain in effect this liability insurance until the STATE certifies that the PROVIDER's work under the Contract has been completed satisfactorily.

The liability insurance shall be primary and shall cover the insured for all work to be performed under the Contract, including changes, and all work performed incidental thereto or directly or indirectly connected therewith.

A certificate of the liability insurance shall be given to the STATE by the PROVIDER. The certificate shall provide that the STATE and its officers and employees are Additional Insureds. The certificate shall provide that the coverages being certified will not be cancelled or materially changed without giving the STATE at least 30 days prior written notice by registered mail.

Should the "liability insurance" coverages be cancelled before the PROVIDER's work under the Contract is certified by the STATE to have been completed satisfactorily, the PROVIDER shall immediately procure replacement insurance that complies in all respects with the requirements of this section.

Nothing in the insurance requirements of this Contract shall be construed as limiting the extent of PROVIDER's responsibility for payment of damages resulting from its operations under this Contract, including the PROVIDER's separate and independent duty to defend, indemnify, and hold the STATE and its officers and employees harmless pursuant to other provisions of this Contract.

1.5 Notice to Clients. Provided that the term of this Contract is at least one year in duration, within 180 days after the effective date of this Contract, the PROVIDER shall create written procedures for the orderly termination of services to any clients receiving the Required Services under this Contract, and for the transition to services supplied by another provider upon termination of this Contract, regardless of the circumstances of such termination. These procedures shall include, at

the minimum, timely notice to such clients of the termination of this Contract, and appropriate counseling.

- 1.6 Reporting Requirements. The PROVIDER shall submit a Final Project Report to the STATE containing the information specified in this Contract if applicable, or otherwise satisfactory to the STATE, documenting the PROVIDER's overall efforts toward meeting the requirements of this Contract, and listing expenditures actually incurred in the performance of this Contract. The PROVIDER shall return any unexpended funds to the STATE.
- 1.7 Conflicts of Interest. In addition to the Certification provided in the Standards of Conduct Declaration to this Contract, the PROVIDER represents that neither the PROVIDER nor any employee or agent of the PROVIDER, 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 PROVIDER's performance under this Contract.

2. Documents and Files

2.1 Confidentiality of Material.

- 2.1.1 Proprietary or Confidential Information. All material given to or made available to the PROVIDER by virtue of this Contract that is identified as proprietary or confidential information shall be safeguarded by the PROVIDER and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
- 2.1.2 Uniform Information Practices Act. All information, data, or other material provided by the PROVIDER to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS, and any other applicable law concerning information practices or confidentiality.

2.2 Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished that is developed, prepared, assembled, or conceived by the PROVIDER 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 PROVIDER pursuant to this Contract.

2.3 Records Retention. The PROVIDER and any subcontractors shall maintain the books and records that relate to the Contract, and any cost or pricing data for three (3) years from the date of final payment under the Contract. In the event that any litigation, claim, investigation, audit, or other action involving the records retained under this provision arises, then such records shall be retained for three (3) years from the date of final payment, or the date of the resolution of the action, whichever occurs later. During the period that records are retained under this section, the

PROVIDER and any subcontractors shall allow the STATE free and unrestricted access to such records.

3. Relationship between Parties

- 3.1 Coordination of Services by the STATE. The STATE shall coordinate the services to be provided by the PROVIDER in order to complete the performance required in the Contract. The PROVIDER shall maintain communications with the STATE at all stages of the PROVIDER's work, and submit to the STATE for resolution any questions which may arise as to the performance of this Contract.
- 3.2 Subcontracts and Assignments. The PROVIDER may assign or subcontract any of the PROVIDER's duties, obligations, or interests under this Contract, but only if (i) the PROVIDER obtains the prior written consent of the STATE and (ii) the PROVIDER's assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawai'i, and the Internal Revenue Service showing that all delinquent taxes, if any, levied or accrued under state law against the PROVIDER's assignee or subcontractor have been paid. Additionally, no assignment by the PROVIDER of the PROVIDER's right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawai'i, as provided in section 40-58, HRS.
- 3.3 Change of Name. When the PROVIDER asks to change the name in which it holds this Contract, the STATE, shall, upon receipt of a document acceptable or satisfactory to the STATE indicating such change of name such as an amendment to the PROVIDER's articles of incorporation, enter into an amendment to this Contract with the PROVIDER to effect the change of name. Such amendment to this Contract changing the PROVIDER's name shall specifically indicate that no other terms and conditions of this Contract are thereby changed, unless the change of name amendment is incorporated with a modification or amendment to the Contract under paragraph 4.1 of these General Conditions.
- 3.4 Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
- 3.4.1 Independent Contractor. In the performance of services required under this Contract, the PROVIDER 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 PROVIDER in compliance with this Contract.
- 3.4.2 Contracts with Other Individuals and Entities. Unless otherwise provided by special condition, the STATE shall be free to contract with other individuals and entities to provide services similar to those performed by the Provider under this Contract, and the

PROVIDER shall be free to contract to provide services to other individuals or entities while under contract with the STATE.

- 3.4.3 PROVIDER's Employees and Agents. The PROVIDER and the PROVIDER's employees and agents are not by reason of this Contract, agents or employees of the State for any purpose. The PROVIDER and the PROVIDER'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. Unless specifically authorized in writing by the STATE, the PROVIDER and the PROVIDER's employees and agents are not authorized to speak on behalf and no statement or admission made by the PROVIDER or the PROVIDER's employees or agents shall be attributed to the STATE, unless specifically adopted by the STATE in writing.
- 3.4.4 PROVIDER's Responsibilities. The PROVIDER shall be responsible for the accuracy, completeness, and adequacy of the PROVIDER's performance under this Contract.

Furthermore, the PROVIDER intentionally, voluntarily, and knowingly assumes the sole and entire liability to the PROVIDER's employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the PROVIDER, or the PROVIDER's employees or agents in the course of their employment.

The PROVIDER shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the PROVIDER 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 PROVIDER also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.

The PROVIDER shall obtain a general excise tax license from the Department of Taxation, State of Hawai'i, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The PROVIDER shall obtain a tax clearance certificate from the Director of Taxation, State of Hawai'i, and the Internal Revenue Service showing that all delinquent taxes, if any, levied or accrued under state law against the PROVIDER have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The PROVIDER shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under section 103-53, HRS, and these General Conditions.

The PROVIDER is responsible for securing all employee-related insurance coverage for the PROVIDER and the PROVIDER'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.

3.5 Personnel Requirements.

3.5.1 Personnel. The PROVIDER shall secure, at the PROVIDER's own expense, all personnel required to perform this Contract, unless otherwise provided in this Contract.

3.5.2 Requirements. The PROVIDER shall ensure that the PROVIDER'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. Modification and Termination of Contract

4.1 Modification of Contract.

4.1.1 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 PROVIDER and the STATE.

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

4.1.3 Tax Clearance. The STATE may, at its discretion, require the PROVIDER 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 Hawai'i, and the Internal Revenue Service showing that all delinquent taxes, if any, levied or accrued under state and federal law against the PROVIDER have been paid.

4.2 Termination in General. This Contract may be terminated in whole or in part because of a reduction of funds available to pay the PROVIDER, or when, in its sole discretion, the STATE determines (i) that there has been a change in the conditions upon which the need for the Required Services was based, or (ii) that the PROVIDER has failed to provide the Required Services adequately or satisfactorily, or (iii) that other good cause for the whole or partial termination of this Contract exists. Termination under this section shall be made by a written notice sent to the PROVIDER ten (10) working days prior to the termination date that includes a brief statement of the reason for the termination. If the Contract is terminated under this paragraph, the PROVIDER shall cooperate with the STATE to effect an orderly transition of services to clients.

- 4.3 Termination for Necessity or Convenience. If the STATE determines, in its sole discretion, that it is necessary or convenient, this Contract may be terminated in whole or in part at the option of the STATE upon ten (10) working days' written notice to the PROVIDER. If the STATE elects to terminate under this paragraph, the PROVIDER shall be entitled to reasonable payment as determined by the STATE for satisfactory services rendered under this Contract up to the time of termination. If the STATE elects to terminate under this section, the PROVIDER shall cooperate with the STATE to effect an orderly transition of services to clients.
- 4.4 Termination by PROVIDER. The PROVIDER may withdraw from this Contract after obtaining the written consent of the STATE. The STATE, upon the PROVIDER's withdrawal, shall determine whether payment is due to the PROVIDER, and the amount that is due. If the STATE consents to a termination under this paragraph, the PROVIDER shall cooperate with the STATE to effect an orderly transition of services to clients.
- 4.5 STATE's Right of Offset. The STATE may offset against any monies or other obligations that STATE owes to the PROVIDER under this Contract, any amounts owed to the State of Hawai'i by the PROVIDER under this Contract, or any other contract, or pursuant to any law or other obligation owed to the State of Hawai'i by the PROVIDER, including but not limited to the payment of any taxes or levies of any kind or nature. The STATE shall notify the PROVIDER in writing of any exercise of its right of offset and the nature and amount of such offset. For purposes of this paragraph, amounts owed to the State of Hawai'i shall not include debts or obligations which have been liquidated by contract with the PROVIDER, and that are covered by an installment payment or other settlement plan approved by the State of Hawai'i, provided, however, that the PROVIDER shall be entitled to such exclusion only to the extent that the PROVIDER is current, and in compliance with, and not delinquent on, any payments, obligations, or duties owed to the State of Hawai'i under such payment or other settlement plan.

5. Indemnification

- 5.1 Indemnification and Defense. The PROVIDER shall defend, indemnify, and hold harmless the State of Hawai'i, the contracting agency, and their officers, employees, and agents from and against any and all liability, loss, damage, cost, expense, including all attorneys' fees, claims, suits, and demands arising out of or in connection with the acts or omissions of the PROVIDER or the PROVIDER'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.
- 5.2 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 PROVIDER in connection with this Contract, the PROVIDER shall pay any cost and expense incurred by or imposed on the STATE, including attorneys' fees.

6. Publicity

- 6.1 Acknowledgment of State Support. The PROVIDER shall, in all news releases, public statements, announcements, broadcasts, posters, programs, computer postings, and other printed, published, or electronically disseminated materials relating to the PROVIDER's performance under this Contract, acknowledge the support by the State of Hawai'i and the purchasing agency.
- 6.2 PROVIDER's Publicity Not Related to Contract. The PROVIDER shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, or to the services or goods, or both provided under this Contract, in any of the PROVIDER's publicity not related to the PROVIDER's performance under this Contract, including but not limited to commercial advertisements, recruiting materials, and solicitations for charitable donations.

7. Miscellaneous Provisions

- 7.1 Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the PROVIDER, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
- 7.2 Paragraph Headings. The paragraph headings appearing in this Contract have been inserted for the purpose of convenience and ready reference. They shall not be used to define, limit, or extend the scope or intent of the sections to which they pertain.
- 7.3 Antitrust Claims. The STATE and the PROVIDER recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the PROVIDER hereby assigns to the 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.
- 7.4 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 Hawai'i. 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, Hawai'i.
- 7.5 Conflict between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the Procurement Rules or a Procurement Directive, the Procurement Rules or any Procurement Directive in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
- 7.6 Entire Contract. This Contract sets forth all of the contracts, conditions, understandings, promises, warranties, and representations between the STATE and the PROVIDER 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 contracts, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the PROVIDER other than as set forth or as referred to herein.

- 7.7 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.
- 7.8 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 Hawai'i 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 PROVIDER's obligations under the Procurement Rules or statutes.
- 7.9 Execution in Counterparts. This Contract may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one instrument.

8. Confidentiality of Personal Information

8.1 Definitions.

8.1.1 Personal Information. "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.

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

8.2 Confidentiality of Material.

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

8.2.2 Retention, Use, or Disclosure. PROVIDER agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.

8.2.3 Implementation of Technological Safeguards. PROVIDER agrees to implement appropriate “technological safeguards” that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.

8.2.4 Reporting of Security Breaches. PROVIDER shall report to the STATE in a prompt and complete manner any security breaches involving personal information.

8.2.5 Mitigation of Harmful Effect. PROVIDER agrees to mitigate, to the extent practicable, any harmful effect that is known to PROVIDER because of a use or disclosure of personal information by PROVIDER in violation of the requirements of this paragraph.

8.2.6 Log of Disclosures. PROVIDER shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by PROVIDER on behalf of the STATE.

8.3 Security Awareness Training and Confidentiality Agreements.

8.3.1 Certification of Completed Training. PROVIDER certifies that all of its employees who will have access to the personal information have completed training on security awareness topics related to protecting personal information.

8.3.2 Certification of Confidentiality Agreements. PROVIDER certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:

- 1) The personal information collected, used, or maintained by the PROVIDER will be treated as confidential;
- 2) Access to the personal information will be allowed only as necessary to perform the Contract; and
- 3) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

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

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

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

8.5 Records Retention.

8.5.1 Destruction of Personal Information. Upon any termination of this Contract, PROVIDER shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.

8.5.2 Maintenance of Files, Books, Records. The PROVIDER and any subcontractors shall maintain the files, books, and records, that relate to the Contract, including any personal information created or received by the PROVIDER on behalf of the STATE, and any cost or pricing data, for three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall not be disclosed without the prior written approval of the STATE. After the three (3) year retention period has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS.