



HAWAII DEPARTMENT OF ACCOUNTING & GENERAL SERVICES

RELEASE DATE: February 16, 2016

REQUEST FOR PROPOSALS
RFP-ERP16001

SEALED OFFERS
FOR
ENTERPRISE PAYROLL SOLUTION

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING & GENERAL SERVICES

OFFERS IN RESPONSE ARE DUE AT 4:00 P.M., HAWAII STANDARD TIME (HST) ON

April 4, 2016

(or such later date as may be established by the State of Hawaii by an Addendum to this RFP)

DIRECT ALL QUESTIONS REGARDING THIS RFP, QUESTIONS OR ISSUES RELATING TO THE ACCESSIBILITY OF THIS RFP (INCLUDING THE APPENDICES AND EXHIBITS AND ANY OTHER DOCUMENT RELATED TO THIS RFP) AND REQUESTS FOR ACCOMMODATIONS FOR PERSONS WITH DISABILITIES IN CONNECTION WITH THIS RFP, TO:

DEBRA A. GAGNE, TELEPHONE
(808) 586-1944 OR EMAIL ADDRESS ETS.ERP@HAWAII.GOV.

Douglas Murdock
Comptroller & Procurement Officer

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1. Introduction

This Request for Proposals (“**RFP**”) is issued by the State of Hawaii (“**State**”). The issuing office is the Comptroller’s Office, Department of Accounting & General Services. The DAGS Accounting Division shall administer any Contract and services that result from this RFP and associated services, and assist in the RFP Process. This RFP is conducted pursuant to a competitive sealed proposal process pursuant to HRS §103D-303, and HAR Title 3, Subtitle 11, Chapter 122, Subchapter 6, the provisions of which are incorporated by reference and/or attached, and made a part of this RFP in accordance with the terms of the Primary RFP Document (as such term is defined below). Terms and Acronyms used in the RFP are defined in Table 1, in **Section 2**.

2. Definitions of Terms and Acronyms

2.1 Terms and Acronyms

Table 1 defines the terms and acronyms used in this RFP. Terms and acronyms used in the Appendices or Exhibits that are not defined in Table 1 are defined in an Appendix and/or an Exhibit, as applicable. References to Sections in Table 1 are to Sections in the Primary RFP Document unless otherwise indicated. For convenience, the relationships among EPS-related definitions are provided in **Section 2.2**.

Table 1. Terms and Acronyms

Term/Acronym	Definition
Addendum and Addenda	An amendment and amendments to the RFP (including to an Exhibit or an Appendix)
AG	Attorney General of the State of Hawaii
Appendices	Appendices A through M to the Primary RFP Document
B&F	State Department of Budget and Finance
BAFO(s)	Best and Final Offer(s)
BPO	Business Process Outsourcing
Business Day	Any Day that is not a Saturday, Sunday or public holiday in the State of Hawaii
CA	Contract Administrator
COGS	Certificate of Good Standing
Composite Rate Card	Schedule of proposed hourly billing rates, as applicable to different services, of the Offeror’s and its subcontractors’ employees, which is used to determine the “Time” component of a T&M charge (different rates may be used for different phases and aspects of the Services) and of rates that will be used for calculating Unanticipated Tasks
Contract	The contract entered into by the State with an Enterprise Payroll Solution contractor.
Contract Records	Defined in Section 19.2.1

Term/Acronym	Definition
Contractor(s)	The Offeror whom the State selects to provide services shall be referred to as the Contractor .
COTS	Commercial Off-The-Shelf software typically requires configuration that is tailored for specific uses within the defined parameters of the product and not the result of customizations.
CPO	State Chief Procurement Officer
DAGS-AD	State Department of Accounting and General Services, Accounting Division
DAGS-CO	State Department of Accounting and General Services, Comptroller's Office
DAGS/ICSD	State Department of Accounting and General Services/Information and Communication Services Division
Day(s)	A calendar day or days
Deliverables	Defined in " Appendix E-1, Consulting Services Requirements " and " Appendix E-2, Ongoing Services Requirements "
DHRD	State Department of Human Resources Development
DOE	State Department of Education
DOH	State Department of Health
eHR	eHuman Resources
ELS	Electronic Leave System
EPS	Enterprise Payroll Solution, defined in Section 2.2
EPS Services	Defined in Section 2.2
EPS System	Defined in Section 2.2
ERP	Defined in Section 3.1.4
ESC	State Executive Steering Committee as defined in Section 4.2
ESS	Employee Self Service
ETS	State Office of Enterprise Technology Services
Evaluation Committee	Defined in Section 4.3
Evaluation Criteria	Defined in Section 14.8
FAMIS	Financial Accounting and Management Information System
FFP	Firm Fixed Price
FMS	Financial Management System
FTE	Full-time Equivalent(s)
General Provisions	Exhibit 4

Term/Acronym	Definition
GET	General Excise Tax
HAR	Hawaii Administrative Rules
HCE	Hawaii Compliance Express
HHSC	Hawaii Health Systems Corporation
HIC	Hawaii Information Consortium
Hosting Options	Defined in Section 5.4.9 and “ Appendix E-2, Ongoing Services Requirements ”
Hosting Solution	Defined in “ Appendix E-2, Ongoing Services Requirements ”
HR	Human Resources
HRMS	Human Resources Management System
HRS	Hawaii Revised Statutes
HST	Hawaii Standard Time
Islands of Hawaii	The inhabited islands of Hawaii
IP	Internet Protocol
IRS	Internal Revenue Service
Judiciary	The Judicial Branch of the State of Hawaii
Law	Means HRS, HAR, Federal and all other statutes, regulations, legislative enactments, and declarations, decrees, directives, judgments, injunctions, regulatory decisions or orders, ordinances, rules or other binding restrictions of or by any governmental authority, including opinions, policies and directions from the Department of the Attorney General
M&O	Maintenance and Operations
MSS	Manager Self-Service
NDA	Confidentiality and Nondisclosure Agreement
OF	Offer Form
Offer	An Offer (a proposal) from an Offeror submitted in response to the RFP
Offeror	Any individual, partnership, firm, corporation, joint venture or other legal entity, which has submitted an Offer directly or through a duly authorized representative or agent. “Offeror” includes a Priority-Listed Offeror except as otherwise indicated or the context otherwise requires
Offeror POC	Individual designated by a Prospective Offeror as its Point of Contact, as further defined in Section 4.1.3
Offeror’s Library	Defined in Section 8.3
Ongoing Services	Defined in “ Appendix E-2, Ongoing Services Requirements ”

Term/Acronym	Definition
Procurement Officer	The State Procurement Officer
Parties	Means the State and a Contractor
pCard	Purchasing Card
Phase	Payroll Services for all jurisdictions, and Time & Attendance for all jurisdictions [take from 5.2]
Primary RFP Document	Defined in Section 2.3
Priority-Listed Offeror	Defined in Section 14.1
Prospective Offeror	Vendor that is registered in HCE and has submitted an NDA pursuant to Exhibit 2 .
Release Date	The date of issuance of the RFP
RFP	Defined in Section 2.3 and as encompassed by the term “solicitation” as used in the General Provisions, Exhibit 4 .
RFP Process	The procurement process conducted by the State under this RFP
RFP Requirements	The technical and other specifications that define the requirements that are used for Acceptance Criteria, as described in: (i) the RFP; (ii) the Response; (iii) subsequent Deliverables which have received Acceptance; (iv) the Performance Standards; (v) the Documentation; and (vi) all applicable State and federal policies, laws, regulations, and Standards. The Specifications are, by this reference, made a part of this Contract, as though completely set forth herein.
SaaS	Software-as-a-Service
Services	EPS Services and related services
SPO	State Procurement Office
State	The government of the State of Hawaii, including the departments within the Executive Branch and all governmental bodies administratively attached to it, the Department of Education and designated Charter Schools, the Judiciary, the Legislature, the University of Hawaii, the Hawaii Health Systems Corporation, and the Office of Hawaiian Affairs, except where such government entity is specifically excluded in the RFP.
State POC	The individual designated as the Point of Contact as defined in Section 4.1
Strategic EPS Plan	Defined in Section 2.2
T&M	Time and Materials charges in accordance with applicable Composite Rate Card(s)

Term/Acronym	Definition
Work Product	Defined in “ Appendix E-1, Implementation Services Requirements ” and “ Appendix E-2, Ongoing Services Requirements ”
UH	University of Hawaii

2.2 EPS-Related Terms

The State has established a statewide IT strategy with respect to several IT objectives and projects. As part of this, it has established a strategic Enterprise Resource Planning Program. Under the ERP Program is the Enterprise Payroll Solution (EPS) Project. The relationship of ERP- and EPS-related terms used in this RFP is as follows: (a) the “**EPS System**,” which consists of hardware and software, including “**COTS**” required to meet the “**RFP Requirements**,” (b) the “**EPS Services**,” which are services provided in connection with the EPS System; (c) the “**EPS**,” which consists of the combination of EPS System, the EPS Services and other associated services; (d) a “**Project**,” which includes “**Implementation Services**,” etc., to implement the RFP Requirements in whole or in part; (e) an “**EPS Project**,” which are two or more sub-Projects or **Phases** to create and deliver the EPS; and (f) the “**Offer**,” which is a proposal submitted by an “**Offeror**” to this RFP to meet the RFP Requirements.

2.3 Definition of RFP and Other Terms

As used herein, the term “**RFP**” means all of the following: the Primary RFP Document, the Exhibits and the Appendices, as any of the same may be revised or amended, and also HRS §103D-303 and Title 3, Subtitle 11, Chapter 122, Subchapter 6 HAR, which are incorporated as if set forth herein, and other applicable Law. Each amendment, modification or supplement to this RFP shall be referred to as an Addendum. The Offeror’s Library is not part of the RFP, and for clarity, is not incorporated into the RFP by reference. The Offeror’s Library is further discussed in **Section 8.3**. The term “**Primary RFP Document**” means the RFP exclusive of the Exhibits and the Appendices but including, for clarity, Addenda to the Primary RFP Document. The terms, conditions and provisions of the Primary RFP Document are in addition to the General Conditions. To the extent that the terms, conditions and provisions of the Primary RFP Document are additions or revisions to the General Provisions, they constitute “Special Provisions” as that term is used in the General Provisions. In the event of a conflict between or among the Special Provisions and the General Provisions, the Special Provisions shall govern and control.

3. Background

3.1 Existing State IT Structure

3.1.1 At present, within the State, the responsibility for several core administrative functions such as financial management, acquisition management, human resource management, payroll and budget

management is distributed between each department and central departments, such as the Department of Accounting and General Services (“**DAGS**”), Budget and Finance (“**B&F**”) and the Department of Human Resources Development (“**DHRD**”). The Department of Education (“**DOE**”) and the University of Hawaii (**UH**) have historically operated separately from the rest of the Executive Branch and have separate systems and processes from the other departments and each other. Similarly, the Hawaii Health Systems Corporation (**HHSC**) is a quasi-governmental entity attached to the Department of Health (**DOH**). Finally, the Legislative Branch and the **Judiciary** of State government operate independently. All of these entities, however, are dependent and connected to certain specific operations of the Executive Branch, e.g. payroll.

- 3.1.2 The key systems that support administrative functions across the State are operated by the central departments and primarily focus on State-level requirements. These systems include the DAGS Financial Accounting and Management Information System (“**FAMIS**”) and DHRD’s PeopleSoft Human Resource Management Information System (“**HRMS**”). The DOE utilizes the Financial Management System (“**FMS**”) and eHuman Resources (“**eHR**”) to support its administrative functions. UH and Judiciary have their own installations of PeopleSoft HRMS; while HHSC utilizes Lawson. There are various leave management systems deployed in a few user agencies. (See “**Appendix J, Current Environment**” for additional information on the key existing IT systems.)
- 3.1.3 Each department is nevertheless responsible for department-specific administrative functions and maintaining and reporting on departmental programs and initiatives. Additionally, departments have had significant latitude in developing and maintaining their own systems.
- 3.1.4 Over the past few years, the State has made a relatively minimal investment in its core business systems. The State then initiated an Enterprise Resource Planning (ERP) Program to address the administrative system requirements to support changing business priorities and on-going capital investments. Numerous campaigns to communicate need to the departments were attempted, but efforts were insufficient to realize sustaining momentum, and the program and its efforts to procure a multi-phase solution were cancelled.
- 3.1.5 Capitalizing on lessons learned, the State initiated a new ERP endeavor in the form of “Targeted Projects” that seeks to build out the ERP program in focused campaigns. These targeted projects are intended to be less burdensome on State resources. The first targeted project leveraged a legislative mandate to establish the Statewide Building Asset Management (SBAM) System. The EPS and this RFP is the second to utilize this targeted approach.

3.2 Overview and Purpose of RFP

- 3.2.1 The purpose of the RFP is to allow the State to identify and engage an Enterprise Payroll Solution (EPS) Contractor to provide a payroll and time-

and-attendance solution that will modernize certain State IT systems and processes and State business processes, including replacing or updating legacy State payroll and leave management systems. This RFP's purpose also includes the introduction of the time and attendance concept to the State as it is commonly used in ERP discussions. Offers should take into consideration the State's goal of optimizing business value and the delivery of a technically sophisticated and cost-efficient EPS while meeting the unique business and technical needs of the State, which include needs arising from the State's long distance from the United States mainland, its physical isolation in the middle of the Pacific Ocean, constrained network connectivity to the mainland (giving rise to IT issues such as latency and limited bandwidth), constrained network speeds and bandwidth within Hawaii, and the State's exposure to extreme weather and natural disasters.

- 3.2.2 The State's modernization initiative is intended to improve State operations and services by creating a more streamlined and enhanced IT environment, and to foster improved collaboration among internal and external stakeholders. The RFP includes requirements for a modern, integrated EPS System that must alleviate many of the key challenges the State is facing and improve efficiency and effectiveness. The EPS must allow the State to retire its existing antiquated payroll and leave management solutions, and reduce existing operational risk in the State's current IT operations; while facilitating data sharing and collaboration among the remaining existing legacy systems. For additional information, see "**Appendix J, Current Environment.**"

3.3 Hawaii Business Goals

The State requests Offers for an EPS to enable the State to meet the following business goals, but without limiting an Offeror's obligation to submit an Offer that meets the requirements set out in Appendices or other RFP Requirements.

- 3.3.1 Establish core functionality within the EPS that delivers the greatest business benefit to the State.
- 3.3.2 Improve payroll processes, timeliness, consistency, and accuracy of payroll generation and reporting. Reduce dependency on paper.
- 3.3.3 Establish a technical foundation for the EPS that is reliable and accommodates the changing business needs of the State, including those identified through the fit-gap requirements of "**Appendix E-1, Implementation Services Requirements.**"
- 3.3.4 Provide an EPS that minimizes risk and maximizes business benefits.
- 3.3.5 Protect the privacy and security of State employee and citizen personal information (including health and financial-related personal information and similar personal information of State employees and/or residents).
- 3.3.6 Enable consistent adoption and application of policies and procedures across State departments.

- 3.3.7 Increase efficiency to improve State services to its employees and for the citizens, residents and businesses in Hawaii.
- 3.3.8 Implement and operate an EPS that reduces organizational disruption and impact to the State by minimizing complexity in implementation, operation and support.
- 3.3.9 Train State staff to configure and operate the EPS with minimal support from consultants and provide for ongoing training and knowledge transfer regarding operating the system.

4. Points of Contact

4.1 State Point of Contact and Offeror Point of Contact

- 4.1.1 The State has designated the following person as its point of contact ("**State POC**") for this RFP:

Debra A. Gagne

State Office of Enterprise Technology Services (ETS)

Phone: (808) 586-1944

Email: ets.erp@hawaii.gov

The State may designate one or more members of ETS or DAGS as a successor or successors to the individual named above.

- 4.1.2 During the RFP Process, an Offeror shall contact the State POC for matters regarding the RFP, except to the extent directed otherwise by the State POC or as set forth herein. In that case, Offeror shall contact the State governmental unit or employee designated by and for the purposes directed by the State POC. An Offeror's failure to contact the State POC as the first point of contact, or to contact the designated State department or employee unless first directed to do so by the POC, can result in the Offeror receiving misinformation or in misunderstanding some aspect of the RFP Process, either or both of which may adversely affect its Offer and the evaluation of the Offer. The State has no responsibility for any such misinformation or misunderstanding.
- 4.1.3 Each Prospective Offeror shall designate its own employee to serve as its point of contact ("**Offeror POC**") to communicate on its behalf with the State POC. The Prospective Offeror may designate different employees to serve as its Offeror POC upon reasonable notice to the State POC, if and when Prospective Offeror becomes an Offeror and/or a Priority-Listed Offeror, provided there shall be only one individual serving as the Offeror POC at any time unless otherwise permitted by the State.

- ## 5. Guiding Objectives for the EPS Requested Under this RFP

5.1 Minimal Customizations Objective

- ## 5.2 Phased Implementation Objective

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considered if the State can realize time and cost savings without jeopardizing project success.

In the State's preferred approach, Payroll Services are to be implemented prior to Time & Attendance Services. The State also desires to include an implementation of Leave Management as part of the Payroll Services Phase for a subset of State entities. The order of implementation phases is presented below.

- i. Payroll Services for all jurisdictions
- ii. Leave Management Services for Executive Branch, DOE, Judiciary
- iii. Time & Attendance Services for all jurisdictions except UH.

After consultation with Offerors or with the awarded EPS Contractor, the State may determine modifications to the implementation order that achieve cost, speed-to-deployment, and change management advantages. If a proposed change to the implementation order will cause a Contractor to propose an increase in cost to the State, either in charges from the Contractor or an increase in costs incurred by the State from other vendors, the amount of the costs shall be determined and shall be agreed to by the State before the modification(s) becomes effective. Costs incurred by the State include an increase in costs charged, proposed to be charged, or anticipated by the State in costs for goods or services provided by vendors to the State other than Contractors. The method of financing and paying for any modification shall be determined by the State.

The State shall perform an assessment of the quality of deliverables produced, and level of project success achieved at the end of the Payroll Services portion of the Contract, prior to continuing with Time & Attendance Services. Based on this assessment, the State in its sole discretion will decide on the feasibility, efficacy, and affordability of continuing with the Time & Attendance Services Phase, and reserves the right to terminate the Contract with no liability to the Contractor if the State concludes it would be in its best interests to do so.

5.3 Functionality Deployment Objective

The State anticipates that for the Payroll Services Phase, interfaced jurisdictions will deploy ahead of the remainder. Parallel payroll processing between EPS and the legacy systems is expected for a minimum of four (4) pay periods for each implementation wave.

For the Time & Attendance Services Phase, if implemented, functionality will be deployed to groups of departments, agencies and/or jurisdictions of the State (i.e., waves), which will be determined by the State. This strategy addresses the organizational change management issues that are expected, as well as anticipated high demand for resources as part of the process of gaining employee acceptance and achieving proficiency throughout the business processes affected.

The State anticipates certain elements of Employee Self-Service (ESS) and Manager Self-Service (MSS) functionality will be implemented for their applicability to the initial goal of replacing the payroll system. These elements are considered

and included in this RFP as Required Functionality. Other elements of ESS and MSS which might be implemented in support of the subsequent Time and Attendance phase are being grouped as Optional Functionality (see “**Appendix C-1, Payroll and Time & Attendance Requirements**”).

For additional discussion regarding and affecting the State’s preferred implementation approach, refer to “**Appendix M, Proposed Project Timeline and Considerations.**”

5.4 Hosting Services Objectives

The State’s Hosting Options are described in **Section 5.4.9** and “**Appendix E-2, Ongoing Services Requirements.**” The State will evaluate each Offeror’s proposed Hosting Option based on the enterprise business needs of the State balanced against costs to the State and required service levels, business and technical objectives, and policies.

5.4.1 Objectives

The following objectives with respect to the Hosting Services will be considered by the State in evaluating the Offers:

- (a) Service Level Agreement Objective
- (b) Network Objective
- (c) Resiliency and Recovery Objective
- (d) IT Skills Objective
- (e) Flexibility Objective
- (f) Security Objective
- (g) Regulatory Objective.

5.4.2 Service Level Agreement Objective

In addition to typical service level agreement requirements used in RFPs such as this one, including system availability, response time, recovery time, incident response time, and incident resolution time and so forth, service level requirement goals for this RFP also require resources, such as personnel, be deployed on the Islands of Hawaii to ensure that consistent levels of service are supplied to the State’s jurisdictions, departments and business operations. As described in Appendix F: Service Level Agreements

5.4.3 Network Objective

Access to the EPS System from end-users or endpoint systems requires particular consideration be given to latency and bandwidth objectives as follows:

5.4.3.1 Latency: The EPS System may be sensitive to network latency for its proper function. Minimizing latency factors resulting from the distance between end-users and endpoint systems and the primary data center may demand data center proximity to or location(s) in the State. The State's goal is to select a Hosting Solution that can guarantee a specific network response time to meet the RFP Requirements.

5.4.3.2 Bandwidth and Usage: The EPS System will transfer large amounts of data, which can increase network utilization costs. The State's goal is to have Offerors size the network connection to maximize utilization without incurring any unexpected network connectivity expenses to the State.

5.4.4 Resiliency and Recovery Objective

The mission-critical nature of the EPS requires application availability and resiliency. The recovery time objectives require meeting the objectives for the following:

5.4.4.1 Data Protection: The EPS requires high levels of data protection, ranging from tape backup to synchronously replicated data on mirrored storage sub-systems with regular data snapshots and archiving. The State's goal is to achieve the required level of protection using cost-effective means in order to meet resiliency and recovery needs.

5.4.4.2 Data Center Reliability: EPS System resiliency may require supporting infrastructure resiliency. Data center infrastructure redundancy and design must improve IT system availability and therefore application and data availability. The goal is to ensure that an Offeror's hosting facilities meet the right level of resiliency for the EPS while minimizing expense to the State.

5.4.4.3 Protection from Extreme Weather and Natural Disasters: The Business Continuity Plan requires recovery facilities geographically distant from the facilities where the production applications operate. The goal is to have the EPS meet required application recovery time and point objectives specified in the RFP Requirements at a low expense to the State. For example, these goals can be met by implementing anything from reserved space with a disaster recovery provider to the application running in lockstep for continuous availability at a geographically distant data center.

5.4.5 IT Skills Objective

The State's objective is to reduce hosting costs and at the same time achieve the right level of IT skills from its Contractor to ensure smooth operation of the EPS and to provide the best skills on the Contractor's staff that specialize in servicing the proposed workload for the EPS.

5.4.6 Flexibility Objective

The EPS requires flexibility of operation. Flexibility in the EPS System and underlying hosting infrastructure are required to meet the State's peak processing demands and data growth, including the following:

5.4.6.1 Data Center Infrastructure Capacity: The goal is to determine capacity, ability to add capacity, and alternatives to gain capacity (through outsourcing, data center moves, or added facilities in alternate locations) to meet current and projected future capacity needs.

5.4.6.2 Provisioning: The goal is to identify and implement technologies, such as internal, private, or public cloud with self-service portals, to meet service-provisioning demands for the State's departments and business operations.

5.4.6.3 Dynamic: The goal is to identify and implement the ability to rapidly add and remove capacity as dictated by business needs while minimizing idle capital assets.

5.4.6.4 Data Storage: The State's demand for storage will continue to grow and may require special storage treatment, such as deduplication, thin provisioning and data tiering.

5.4.7 Security Objective

Data security, application and system security (including protection from malicious code, intrusions, hackers and unauthorized access), and physical security are important State objectives. Because the EPS will contain data that is highly sensitive, special governance procedures and appropriately robust data protection procedures are required. These include:

5.4.7.1 Encryption and Firewalls: The goal is to apply appropriate security zoning, technologies and monitoring measures at low expense to the State.

5.4.7.2 Identity: Identity provisioning and management are required to enforce role-based access control for administrators and users of IT applications and infrastructure, as well as provide users with a single sign-on functionality. This includes allocating identity provisioning and management

systems between enterprise systems and outsourced systems where required.

5.4.8 Regulatory Objective

It is critical to comply with State policies, regulations and Laws, some of which create constraints that may impact Hosting Options and that must be taken into account in meeting the RFP Requirements, including:

- 5.4.8.1** Data Retention: Compliance with applicable regulatory requirements, such as the U.S. Federal Rules of Civil Procedure, HRS and HAR and State regulations and policies that implement regulatory requirements, as well as State retention policies, will impact sourcing choices made to ensure retention and life cycle policies can be met.
- 5.4.8.2** Data Security and Protection: Data security is mandated for data that falls under requirements of Law, including HRS Chapter 487J, the Payment Card Industry Data Security Standard (PCI DSS), Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA), Generally Accepted Accounting Principles (GAAP), Governmental Accounting Standards Board (GASB) Statements, Gramm-Leach-Bliley Act and other requirements, and for data that contains intellectual property and personally identifiable information. Other mandates which must be complied with arise out of Fair Labor Standards Act rules, and USDOL and DLIR Wage and Hour rules. This requires sourcing choices that provide required data protection and security, including in disaster recovery and business continuity operations.
- 5.4.8.3** Diligence in Ensuring Value to the State: The State reserves the right to secure a third-party Independent Verification and Validation (IV&V) consultant to assist the State in making sure that activities associated with the EPS brings value, and adheres to all contract requirements.

5.4.9 Hosting Options

Given the objectives and the constraints identified in **Section 5.4.8**, the State requests Offers be limited to the pair of options for hosting the EPS System, as described below in order of preference:

5.4.9.1 Option 1: Software as a Service (SaaS)

The Offeror hosts the EPS System, provides M&O Services, owns the hardware, and provides State access to

subscription-based EPS software and use of the resulting services (including data).

5.4.9.2 Option 2: Offeror-Hosted

The Offeror will host the EPS System in primary and secondary data centers. The Offeror will own the hardware, and the State will own the EPS software licenses.

Regardless of the hosting option proposed by the Offeror, if the primary data center is hosted in a facility located outside of the State of Hawaii, possible options for transferring the EPS System and/or data to another data center located within the State of Hawaii should be included as part of the response.

5.5 Knowledge Transfer Objective

Each Offeror shall provide a methodology for an intensive knowledge transfer program tailored to the State's particular needs, taking into account that knowledge transfer shall be provided to the State's Project Team (including "boot camp" sessions for both functional and technical sub-teams) throughout all phases of the project. The objective is to successfully provide the State's Project Team with an in-depth understanding of the various EPS System modules and components proposed for implementation (including Ongoing Services), EPS System configuration, application terminology, and as otherwise specified in the Appendices. The Contractor shall provide knowledge transfer for all components of the EPS System, as well as all related third-party software and tools.

5.6 Enhanced End-User Training Objective

Each Offeror in its Offer shall provide an enhanced training methodology to develop an internal State team able to implement a training program for end users on an ongoing basis. The enhanced training methodology is required to enable the State to transition to its full support of the training program over a period of time. The enhanced training program should provide the State with the ability to support a range of training delivery formats (e.g., classroom training, webinar training, online training, online help, knowledge base documents and frequently asked questions). The enhanced training program shall provide the ability for the State to effectively and efficiently train and provide support tools for end users at multiple locations located on each of the Islands of Hawaii.

5.7 Business Process Reengineering Objective

The State anticipates that it will undergo business process reengineering in order to efficiently and effectively implement the EPS. The State's objective is to leverage the EPS business processes and reporting capability and minimize to the extent possible the Contractor's customization of its EPS System. Each Offer shall identify the business process change opportunities, analyze their impact, and communicate to the State the implications for change management of the same.

5.8 Organizational Change Management (OCM) Objective

The State acknowledges that there will be extensive organizational and operational changes required as part of the implementation of the EPS. Each Offeror shall propose how it, if selected as Contractor, will implement an organizational and business process change management program designed to ensure acceptance and use of the new EPS System and reporting tools by relevant State employees in conformity with the State's requirements.

The Offeror's proposal should include in its OCM strategy, how the following obstacles to change will be addressed:

- Current reliance on manual processes;
- Decentralized nature of government and siloed processes;
- Prevalence of personal and institutional knowledge over documentation;
- Hawaii's unique culture.

5.9 Relationship Management Objective

The State requires an effective governance and relationship management process between the State and Contractors, including with the Executive Steering Committee. Requirements regarding the foregoing include those in "**Exhibit 3, Relationship Management**" and the Appendices.

5.10 Data Cleansing and Conversion Objective

Each Offeror shall develop and propose a strategy to cleanse and convert relevant legacy data into the EPS. Each Offeror shall either (i) identify the methodology and the approach for the implementation of tools and procedures to perform the State legacy data extraction, transformation and loading into the EPS System, or (ii), to make available requirements regarding the foregoing include those in "**Appendix C, Payroll and Time & Attendance Requirements.**"

5.11 Continuity of Contractor Personnel Objective

During the periods for each of the EPS Services, the Contractor will maintain a Project Team Facility sufficient to provide and support the applicable Services located not more than two (2) miles from the Hawaii State Capitol building that meets the requirements set forth in "**Appendix E-2, Ongoing Services Requirements**" and provides staffing on Oahu with personnel meeting the requirements regarding skill level and continuity of technical, administrative and management employees set forth in "**Appendix K, Proposed Project Organization and Staffing.**" The State has limited space availability for the project team within its own facilities.

The Contractor shall make available to ETS management personnel and senior executives from the U.S. mainland (including with visits to Oahu) in accord with "**Exhibit 3, Relationship Management.**"

6. Addenda to the RFP

The State shall make modifications to the RFP by issuing one or more Addenda to the then-current RFP via email communication.

7. EPS Components

Table 2 below provides a summary of the components for the EPS and identifies applicable requirements and related appendices. Detailed information is in the Appendices, as noted in Table 2.

Table 2. EPS Components

EPS Component	Requirements	Description	Appendix
EPS System	Functional Requirements	<ul style="list-style-type: none"> ■ Core - Payroll ■ Core - Employee Self-Service (ESS) ■ Core - Manager Self-Service (MSS) ■ Workforce Management - Time Collection ■ Workforce Management - Leave Management ■ Workforce Management – Scheduling 	“Appendix C-1, Payroll and Time & Attendance Requirements”
	Optional Functionality	<ul style="list-style-type: none"> ■ Employee Self-Service (ESS) ■ Manager Self-Service (MSS) 	“Appendix C-2, Optional Payroll and Time & Attendance Requirements”
EPS System	Technical Requirements	<ul style="list-style-type: none"> ■ Technical Architecture ■ Solution Architecture ■ Solution Technology 	“Appendix D, Technical Requirements”
EPS Services	Implementation Services Requirements	<ul style="list-style-type: none"> ■ Project Team Facilities ■ Implementation Services <ul style="list-style-type: none"> □ Project Planning □ Initial Analysis and Design □ Final Analysis and Design □ Configuration and Development □ Testing and Training □ Deployment and Go-Live Support □ Warranty Services 	“Appendix E-1, Implementation Services Requirements”
EPS Services	Ongoing Services Requirements	<ul style="list-style-type: none"> ■ Hosting Services <ul style="list-style-type: none"> □ Software-as-a-Service (“SaaS”) □ Offeror-Hosted 	“Appendix E-2, Ongoing Services Requirements”

EPS Component	Requirements	Description	Appendix
		<ul style="list-style-type: none"> ■ Maintenance and Operations (“M&O”) Services ■ Business Process Outsourcing (“BPO”) Services ■ Project Team Facilities 	

8 Mandatory Use of the Offeror’s Library

To participate in the RFP Process, it is mandatory that each party interested in becoming a Prospective Offeror satisfy the requirements for using the Offeror’s Library, including executing and returning the NDA in accordance with **Exhibit 2, Offeror’s Library Instructions**. The Offeror’s Library (“**Offeror’s Library**”) is used by the State to make available to Prospective Offerors technical and other documents, supplemental background information regarding the State’s IT systems, programs and initiatives, and other materials and information. Instructions for registering to use, and how to access and use the Offeror’s Library, are in “**Exhibit 2, Offeror’s Library Instructions**.” To the extent that the Offeror’s Library is updated during the RFP Process, all such updates are part of the Offeror’s Library and are not and do not become part of the RFP, even if notice of any such update or addition is issued as an Addendum. Although the Offeror’s Library is not part of the RFP, each Prospective Offeror, Offeror and Contractor shall continuously monitor the Offeror’s Library with sufficient frequency to learn, review and assess any updates to the Offeror’s Library. The State shall not be responsible for any person’s or entity’s failure to do so for any reason. The State is not responsible for any delay or failure of any Prospective Offeror, Offeror or Contractor to access the Offeror’s Library (including as updated) and/or assess the contents thereof on a timely basis.

9 Significant RFP Due Dates

Table 3 below contains the State’s current estimate of the schedule of dates of certain steps and deadlines under this RFP. When a date stated in Table 3 constitutes a deadline or date requiring an item due from a Prospective Offeror, Offeror, Priority-Listed Offeror or Contractor, the time of the deadline is 4:00 p.m. HST.

Table 3. Deadlines and Dates

Step	Date
Release of the RFP	Tuesday, February 16, 2016
Pre-Offer Conference	Friday, February 26, 2016
Deadline for Submission of Written Questions from Prospective Offerors regarding the RFP and regarding the Offeror's Library	Wednesday, March 2, 2016
State's Responses to Written Questions	Wednesday, March 9, 2016 (4:00 p.m. HST)
Deadline for Submission of Letter of Intent to Submit Offers	Thursday, March 18, 2016
Deadline for Submission of Offers	Monday, April 4 2016 (4:00 PM HST)
Start of Initial Evaluation of Offers	Monday, April 4, 2016
Determination of Priority-Listed Offerors (as necessary)	Thursday, April 28-30, 2016
Discussions with Priority-Listed Offerors (as necessary)	Thursday May 12-19, 2016
Deadline for BAFO Submission (if required)	Wednesday, June 1, 2016
Notice of Award	On or before Thursday, June 30, 2016
Contract Executed	To Be Determined (TBD)
Notice to Proceed	To Be Determined (TBD)

9.1 Notice of Additions to or Rescheduling of Dates in Table 3

If any date to be established under Table 3 is not provided at the time of the RFP's release, or if any date set forth in Table 3 is rescheduled by the State, the State will issue a notice of the date or the rescheduled date by an Addendum to the RFP via email communication. However, the State reserves the right to establish new or rescheduled dates as it deems appropriate.

10 Release of RFP and Other Steps in the RFP Process

10.1 Issuance of RFP and State's Right to Modify, Cancel, Suspend and/or Terminate the RFP and any Contracts

- 10.1.1** The Procurement Officer will release the RFP and make it available via a posting on the State Procurement Office's Procurement Notices for Solicitation Page (<http://spo3.hawaii.gov/notices/notices>). The posting will include information on how to obtain the RFP electronically.
- 10.1.2** The RFP Process begins upon the release of the RFP. Activities under this RFP before the release of the RFP are preliminary to the procurement process itself.
- 10.1.3** Without limiting any other provision of the RFP (including, for clarity, any Exhibit and the RFP as amended by any Addenda), the State has the right at any time for its convenience and without cause to modify, alter, amend, change, cancel, suspend or terminate the RFP, including, without limitation, the right to cancel and withdraw the RFP prior to acceptance of Offers or prior to the award of a Contract, or in connection with any termination or change in funding.

10.2 Written Questions and Responses

- 10.2.1** If a Prospective Offeror believes that any provision of the RFP is unclear, potentially defective or would prevent it from providing a meaningful Offer, it shall submit questions to the State POC requesting clarification on or before the deadline for doing so in Table 3. Each question shall identify the page, section number, paragraph, and line or sentence of such provision(s) of the RFP to which the question applies. The State POC will respond by the date for the same in Table 3. The State may, but is not required to, issue Addenda in response to the written questions regarding the RFP received.
- 10.2.2** If a Prospective Offeror believes that any portion of the Offeror's Library is unclear or would prevent it from providing a meaningful Offer, it shall submit questions requesting clarification to the State POC on or before the deadline for doing so in Table 3. Each question shall identify the page, section number, paragraph, and line or sentence in the material in the Offeror's Library and/or otherwise readily identify the portion of the Offeror's Library to which the question applies. The State POC will respond by the date for the same in Table 3. The State may, but is not required to, issue Addenda in response to the written questions regarding the Offeror's Library received.
- 10.2.3** A Prospective Offeror shall clearly identify which of its questions apply to the RFP and which apply to the Offeror's Library. A Prospective Offeror shall not submit one question that applies both to the RFP and the Offeror's Library. If the State determines that a single question applies to both the

RFP and the Offeror's Library, then the question shall be deemed to be a question directed to the Offeror's Library.

10.3 Pre-Offer Conference

10.3.1 The State, in its discretion, may hold a Pre-Offer Conference session, either by webinar or through in-person attendance, to provide interested vendors who have registered as required in **Section 11.3.2** with the opportunity to gain further understanding of the RFP Requirements, the RFP Process and the procedures for submitting Offers via flashdrive. These sessions will be held reasonably in advance of the deadline to submit an Offer. The Pre-Offer Conference is for informational purposes only. Neither such Conference nor any information provided through or during it is binding upon the State or constitutes a change to the RFP. Attendance by interested vendors is optional. The State is not responsible if an interested vendor does not attend the Pre-Offer Conference and does not acquire knowledge of the information presented or discussed during such Conference(s).

Notice of the date for the Pre-Offer Conference will be communicated via email. Vendors interested in attending must respond to the email by the stated due date. Each registrant will receive a confirmation email with instructions on how to attend the Pre-Offer Conference.

The State presently intends to use Microsoft Skype for Business if the Pre-Offer Conference is held via webinar. Computer requirements to attend via webinar are set forth at

<http://products.office.com/en-us/skype-for-business/online-meetings>

Instructions for in-person attendance will be provided by the State, if applicable.

10.3.2 All questions regarding a Pre-Offer Conference shall be directed to the State POC.

10.4 Letter of Intent

A Prospective Offeror interested in submitting an Offer shall submit a non-binding Letter of Intent submitted by email to the State POC at the email address ets.erp@hawaii.gov on or before the date set forth in Table 3.

11 Competency and Qualifications of Offeror and Certain Offer Requirements

11.1 Minimum Offeror Requirements

Each Offeror must be capable of meeting the RFP Requirements, must satisfy the minimum Offer qualifications in "**Appendix A, Section 5.1, Offeror Minimum Qualifications**" and be and remain qualified to serve as a Contractor to the State.

11.1.1 Early Demonstration of Compliance

The State requires Offerors to be in compliance with all Laws governing entities doing business in the State, at the time a contract award is made (Section 19.3). At the point of Offer submittal, Offerors shall demonstrate compliance by including proof in their Offer Responses (**Appendix A, Offeror Response Form**).

11.1.2 Staffing Plan

In Section 5.4 of the Offeror Response Form (**Appendix A**), the Offeror must demonstrate through staff resumes, past project references, etc., that the Offeror's team is fully-qualified, trained, and experienced to be able to successfully complete every deliverable specified in this RFP, as detailed in **Appendix K, Proposed Project Organization and Staffing**.

11.2 Submission by Flashdrive

Each Offer must be submitted in electronic form via flashdrive to the State POC by the deadline in Table 3, or as it may be amended. Each Offeror must also submit at least one hardcopy of the offer to the State POC by the deadline in Table 3, or as it may be amended. The hardcopy Offer should be bound with tabbed sections as identified in Appendix A: Offerors Checklist. To ensure the State is in receipt of the complete Offer, each Offeror shall submit their Offer on two separate flashdrives. This will result in two identical flashdrives being submitted. Documents submitted on each flashdrive shall be segregated into 2 main file folders; PDF documents and non-PDF documents (Word, Excel documents), with subfolders in each main folder representing each element requested in Appendix A: Offerors Request Form, Offerors Checklist. As noted, an Offer must be a complete plan for providing an EPS, including Ongoing Services that meets the RFP Requirements. It shall include any supplemental tasks or services the Offeror has identified as necessary to meet the RFP Requirements. An Offer submitted to the State POC shall be considered the original copy of the Offeror's Offer. An Offer received on or after the deadline in Table 3 via an email account, or by fax, postal delivery or hard copy will not be considered for an award and the Offeror will be dismissed from the RFP Process. An Offeror's submission of an Offer constitutes an incontrovertible representation by the Offeror of its compliance with all RFP Requirements and applicable Law.

The flashdrives and the paper copy shall be submitted to the following address:

Office of the Comptroller
Hawaii Department of Accounting & General Services
1151 Punchbowl Street, Room 400
Honolulu, HI 96813

The package containing the flashdrives and hardcopies shall be clearly marked on the exterior, as follows:

OFFER FOR RFP-ERP16001
ENTERPRISE PAYROLL SOLUTION, EPS
[Offeror Name]

11.3 Offer Form

Each Offer shall be submitted in the form and manner specified in “**Exhibit 1, Procedures for Submitting an Offer.**” In its Offer, each Offeror shall use the Definitions set forth in Table 1 with respect to the same subject matter referred to in its Offer.

11.4 Contents of Offer

Each Offer shall be deemed to include compliance with all terms and provisions of this RFP and all materials relied on by the Offeror in its presentation(s) to the State. Each Offer shall be self-contained and submitted as a complete proposal in accordance with “**Appendix A, Section 10.0, Offer Checklist**”. There shall be no references to external documents and sites.

11.5 Additional Information

If the State requests additional information regarding aspects of an Offeror's Offer, the Offeror shall provide the same within five (5) Business Days of the State's request, unless the State specifies another time period. As noted, each Offeror shall submit only one Offer. If an Offeror submits more than one Offer, then the State reserves the right to reject and or dismiss the Offeror from the RFP Process.

11.6 Software

Each Offer must identify with specificity the COTS and non-COTS software and hardware items it proposes to use to provide the EPS. To the extent that an Offeror requires or advises the State to use other software to receive and use the EPS, the Offer shall specify (a) the software; (b) whether the Offeror will procure any licenses required by the State to use such software; (c) whether such license will require modification for the use by the State as required or advised by the Offeror; and (d) whether the State itself is required to obtain licenses directly from third parties. Offeror shall make a good faith estimate of the cost to the State of procuring the software and applicable licenses, and maintenance and support services subject to subsection (d).

11.7 Materials Submitted Become Property of the State

Each Offer and other material submitted by the Offeror in its Offer shall become the property of the State even (a) to the extent available to the public pursuant to Law; (b) if the Offer is rejected by the State and/or the Offeror is dismissed from the RFP Process; (c) if the Offer contains confidential information pursuant to, or is asserted by the Offeror to contain confidential information pursuant to **Section 17**; and/or (d) if the Offer is returned to the Offeror in whole or in part by the Procurement Officer or another State agency.

11.8 Offeror Teams

Two vendors may elect to act jointly to provide the EPS. If so, they shall submit a single Offer and designate one vendor as the Offeror and the other as its Subcontractor.

A single vendor cannot submit more than one Offer as a prime. Further, a single vendor cannot submit as a prime on one Offer and as a subcontractor in another Offer.

11.9 Verification of Receipt of Offers

The State's receipt of an Offer shall be verified by at least two (2) State government officials who will conduct a review to determine if any of the grounds for automatic rejection of an Offer apply, including as specified in "**Exhibit 4, General Provisions for Goods and Services dated July 2013.**" If any such ground applies, the Offer shall be rejected and the Offeror dismissed from the RFP Process.

12 Binding Terms of Offer

The terms of each Offeror's Offer, including cost provisions, shall be binding on the Offeror for a period of one hundred and eighty (180) Days beginning upon the due date for submission of Offers in Table 3.

13 Priority-Listed Offerors and Evaluation of Offers

13.1 Determination of Priority-Listed Offerors

The Evaluation Committee shall evaluate and consider for award all Offers received timely. The Evaluation Committee plans to conduct preliminary evaluation of each Offer (excluding any Offer previously rejected pursuant to the terms of the RFP) in accordance with the Evaluation Criteria set forth in Table 4 Evaluation Criteria and the requirements provided in "**Appendix A, Offeror Response Form.**" As a result of such preliminary evaluation, each Offer shall be classified as unacceptable, potentially acceptable or acceptable. As presently contemplated by the State, the Evaluation Committee shall conduct a down-select process to designate no more than three (3) Offerors as "**Priority-Listed Offerors.**" Each of the Priority-Listed Offerors shall continue to participate in the RFP Process unless its Offer is withdrawn by its Offeror. If an Offeror withdraws its Offer, the Offeror shall be dismissed from the RFP Process.

13.2 Presentations, Demonstrations and Discussions during Priority-Listed Offeror Sessions

13.2.1 If deemed appropriate by the State in its sole discretion, at the dates and places determined by the State, the Procurement Officer may hold sessions for Priority-Listed Offeror Presentations, Demonstrations and Discussions. Sessions are limited to only the Priority-Listed Offerors to promote the understanding of the State's requirements and Priority-Listed Offerors' Proposals and to arrive at a contract that meets the needs of the State. The Procurement Officer may convene Priority-Listed Offeror Presentations, Demonstrations and Discussion sessions with one or more of the Priority-Listed Offerors in one or multiple rounds. Presentations and Demonstrations will be recorded for evaluation purposes only. These recordings will be treated as proprietary and confidential, pursuant to Section 1 .0, Confidentiality & Public Records.

13.2.2 Prior to a Priority-Listed Offeror Presentations, Demonstrations and Discussions session, one or more of the following may be provided by the State: an agenda, a script and other information to guide the Priority-Listed Offerors in their Presentations, Demonstrations and Discussions. Examples of the issues that may be addressed by, and matters to be covered with, Priority-Listed Offerors include the following:

- (a) Clarifications of the Offer;
- (b) Interviews with Key Personnel of the Priority-Listed Offeror and/or its Offer-Listed Subcontractors;
- (c) Offeror demonstrations based on scripts provided by the State;
- (d) Clarification and resolution of issues identified during the State's evaluation of Offers including explanation of Offeror Assumptions; and

13.2.3 If as a result of the Priority-Listed Discussion session(s), the State determines there is a need for a clarification or change in the RFP, the RFP shall be amended by Addenda which shall be issued to incorporate such clarification or change. Addenda to the RFP issued after receipt of Offers shall be distributed only to Priority-Listed Offerors.

13.3 Additional Discussions

The State reserves the right to convene additional rounds of discussions with Priority-Listed Offerors prior to a potential call for Best And Final Offers (BAFOs).

13.4 State Inquiries and Site Visits

The State, including through its designees, reserves the right to visit the facilities of or used by an Offeror and/or its proposed subcontractors to inspect such facilities and technology and to observe each of their methods of operation in order to evaluate each of their capabilities to meet the RFP Requirements. These visits may be made one or more times during the RFP Process. This right includes the right to visit data centers and other third-party facilities proposed for use by the Offeror, whether or not any such third party is a proposed subcontractor. Such visits may be made by in-person inspections by the State and/or its designees, and/or by electronic means. Such visits shall be made on reasonable notice. The Offeror shall: (a) make senior personnel qualified to address the State's concerns available to meet with the State or its designees during the inspections and at reasonable times and for reasonable periods of time; (b) make relevant records available to the State or its designees, whether in electronic or written form, except to the extent subject to confidentiality and non-disclosure agreements between the Offeror and third parties that prohibit disclosure to the State; and (c) permit the State or its designees to make and take copies (including in electronic form) of the records, except to the extent subject to confidentiality and nondisclosure agreements between the Offeror and third parties that prohibit disclosure to the State.

13.5 Each Offeror to Bear its Own Costs

Each Offeror shall be responsible for all costs incurred by it prior to the Notice of Award, including, without limitation, its costs of preparing and submitting its Offer, responding to notices or requests, making Priority-Listed Offeror presentations, demonstrations and discussions, and otherwise participating in the RFP Process.

13.6 Evaluation of Offers

The Evaluation Committee will begin its evaluation of Offers on the date set forth in Table 3, taking into account the Evaluation Criteria in Table 4, and an assessment of the Offeror's capability to meet RFP Requirements. Proposals may be accepted on evaluation without discussion. Offers shall not be made available for public inspection until a Notice of Award is made.

13.7 Best and Final Offers

13.7.1 If deemed appropriate by the State in its sole discretion, the State may request each Priority Listed Offeror to submit its BAFO on the date provided in Table 3, or as it may be amended. The request shall be issued in an Addendum, which will provide guidance and additional instructions. BAFOs shall be submitted to the State POC via flashdrive (identical copies on two flashdrives) on or before the deadline provided in Table 3. If a Priority Listed Offeror fails to do so, its last submitted Offer shall be deemed its BAFO.

13.7.2 The BAFOs will be evaluated by the Evaluation Committee taking into consideration the Evaluation Criteria set forth in Table 4 and an assessment of the Offeror's capability to meet RFP Requirements.

13.8 Evaluation Criteria

The following criteria (the "**Evaluation Criteria**") shall be used in evaluating the Offerors:

Table 4. Evaluation Criteria

Evaluation Points	Evaluation Category
15	Offeror Qualifications Offeror Background and Experience Financials Offeror References
15	Project Organization and Staffing Staffing Plans Project Team Staff Experience and References
	Business Solution
40	Functional Requirements Functional Areas Reporting Interfaces Conversions Enhancements Forms Workflows Software Description
15	Technical Requirements Technical Architecture Solution Architecture Solution Technology
10	Implementation Services Implementation Plans included with offer Work Plan and Schedule
25	Ongoing Services Hosting Services Maintenance and Operations Services Business Process Outsourcing Services Project Team Facility Requirements Service Level Agreement Requirements
90	Subtotal Business Solution
80	Cost
200	Total

- 13.8.1** The evaluation shall be performed by members of the Evaluation Committee consisting of at least three (3) government employees with sufficient qualifications and expertise in the area.
- 13.8.2** The evaluation shall be based on the Offerors perceived ability to implement a solution for Enterprise Payroll and Time and Attendance, as applicable to each specific Functional Area plus any required associated services or business processes as listed in Attachment A: Offerors Request Form.
- 13.8.3** Offeror Qualifications: The area of Offeror Qualifications will be evaluated and scored to a maximum of 15 points. This area includes, but is not limited to, all of the specific requirements included in the given Exhibit for the specific Function Area attached to this RFP. This also includes the Offeror's:
- (a) Offeror References, as received by the State
 - (b) Technical and Industry Experience
 - (c) Company Profile, Organization, Financials
 - (d) Proposed Staff Experience and References
- 13.8.4** Project Organization and Staffing: The area of Project Organization and Staffing will be evaluated and scored to a maximum of 15 points. This area includes, but is not limited to, all of the specific requirements included in the given Appendix K: Project Organization and Staffing.
- 13.8.5** Business Solution: The area of Business Solution will be evaluated and scored at a maximum of 90 points. This area includes but is not limited to, all specific requirements included in Appendix C-1: Payroll and Time and Attendance Requirements, Appendix C-2: Optional Payroll and Time and Attendance Requirements, Appendix D: Technical Requirements; Appendix E-1: Implementation Services Requirements, Appendix E-2: Ongoing Services Requirements and Appendix F: Service Level Requirements. Requirements are classified into Payroll and Time and Attendance groupings. This also includes the Offeror's proposed solution for:
- (a) Reporting
 - (b) Interfaces
 - (c) Conversions
 - (d) Enhancements
 - (e) Forms
 - (f) Workflows
 - (g) Software Description
 - (h) Demonstrations of proposed solution

13.8.6 Cost: The area of costs will be evaluated and scored at a maximum of 80 points. This includes the Offeror's completed responses in Appendix L: Cost Workbook for the specific Functional Area attached to this RFP.

This includes:

- (a) Software Licensing and Support
- (b) Hosting Option
- (c) Payroll M&O Services
- (d) Time & Attendance M&O Services
- (e) Business Process Outsourcing
- (f) Project Team Facilities
- (g) Implementation Services – Payroll
- (h) Implementation Services – Time and Attendance
- (i) Optional Functionality
- (j) At-Risk Fee Reduction

13.8.6.1 Cost Points Conversion

After applying the Preference for Hawaii Software Development Business for each applicable Offer, in converting cost to points, the Lowest Total Cost Offer will automatically receive the maximum number of points allocated to cost, which is 80 points. The point allocations for cost on the other Offers will be determined through the method set out in the following formula: $[\text{Lowest Total Cost} \times 80 \text{ points (maximum)}] \text{ divided by } [\text{Offeror's Proposed Total Cost}] = \text{Cost Points Awarded}$.

13.8.6.2 Cost Realism

Evaluation Criteria for a firm fixed-price contract shall include cost realism analysis as input for consideration during evaluation of the non-cost components of an Offer.

“Cost Realism” means that the Costs in an Offeror's Cost Proposal:

1. Are realistic for the work to be performed.
2. Reflect a clear understanding of the Requirements.
3. Are consistent with the various elements of the non-cost portion of the Offer.

An unrealistic Cost may:

- Indicate that an Offeror does not have the organization, experience, and/or technical skills needed to successfully perform the Contract.

- Place additional pressure on the Offeror's financial resources available to support Contract performance.
- Indicate deficiencies in the Offeror's understanding of the Functional, Technical, and/or Services Requirements and the performance risk associated with the Offer.
- Indicate that an Offeror cannot comply with the required or proposed schedule for Contract performance.

The firm fixed-price Contract resulting from this RFP will not be adjusted by the State according to the cost realism analysis. Rather, the cost realism analysis will be used during the evaluation of Offers by identifying and assessing risk within any of the non-cost components of the Evaluation Criteria in "Table 4, Evaluation Criteria".

13.8.7 Preference for Hawaii Software Development Business

13.8.7.1 A ten percent (10%) price preference shall be given to Hawai'i software development businesses pursuant to HAR Chapter 3-124, subchapter 5, to Offerors that meet the qualifications of a Hawaii software development business as specified in HAR 3-124-33 (e.g. 80% of labor needs to be persons domiciled in the State of Hawai'i). For evaluation purposes, price is defined as Total Cost in the Cost Proposal. Copies of this rule are available at the State of Hawaii State Procurement Office website: <http://hawaii.gov/spo>. Click on Procurement Statutes & Administrative Rules from the Reference section of the right column menu, then click on The Hawaii Public Procurement Code. The preference will be applied to the Total Cost that Offeror submits as a complete package, and the preference is applied for evaluation purposes only. Awardees will be required to honor the cost submitted (not the cost resulting from the preference applied).

13.8.7.2 If applicable, Offeror shall indicate on form SPO-009 provided in APPENDIX B, 4.0 CERTIFICATE OF ELIGIBILITY TO CLAIM PREFERENCE AS A HAWAII SOFTWARE DEVELOPMENT BUSINESS whether Offeror is requesting the Hawaii software development business preference. An Offeror requesting a preference shall submit a completed certification form, SPO-009, in its Offer in the Cost Proposal. Any Offeror who fails to indicate that it is a Hawaii software development business will be presumed to be a non-Hawaii software development business and its Offer will be increased by ten percent for purposes of evaluation only.

13.8.7.3 The Procurement Officer may request additional information required to qualify the Offeror's Offer and applicability of the Hawai'i software development preference. Previous certifications shall not apply to this solicitation.

14 Contract Awards

14.8 Award of Contract

After the evaluation of the Offers (or BAFOs, if any), the State will make its determination by the date set forth in Table 3, or as it may be amended. When the State determines in writing one of the Offers/BAFO's provides the best value to the State taking into consideration price and the evaluation criteria, a formal notice of selection will be made by the State's issuance of a Notice of Award. The Offeror receiving the Notice of Award shall enter into a Contract with the State to provide the EPS, including the EPS System and associated services. The Notice of Award, if any, resulting from this RFP shall be made available on the SPO website at <http://hawaii.gov/spo> (State Procurement Office Home Page), Contract Awards & Information. Failure by the chosen vendor to accept the award within five days of its submission will be deemed a rejection of the award. Each Contract shall include or be deemed to incorporate "**Exhibit 4, General Provisions for Goods and Services dated July 2013,**" "**Exhibit 5, State Attorney General (AG) General Conditions,**" and "**Exhibit 6, Selected Supplemental Conditions,**" "a contractual Non-Disclosure Agreement (separate from NDA to access the Offerors' Library). other terms and agreements as may be agreed by the State and the Contractor, this RFP as it may be amended, the Contractor's BAFO (or Offer if there was no BAFO), and other documents referred to in or made part of the BAFO, if any, in accordance with the terms of this RFP.

15 Offers, Offer Process, Contracts and Disclosure

15.1 Register of Offers

All Offers (both those subject to a Notice of Award and those that are rejected) shall be made part of the Register of Offers with respect to this RFP, excluding those portions of an Offer, if any, which constitute confidential information pursuant to **Section 17**. The Register of Offers with respect to this RFP shall be open to public inspection upon issuance of Notice of Award.

15.2 Approval of Contract

A Contract arising out of this RFP is subject to the approval of the Procurement Officer and approval as to form by the Department of the Attorney General, and is subject to further approvals, including the approval of the Governor and as required by Law.

15.3 Contract Terms

The initial term of the Contract between the State and the Contractor shall be for five (5) years to complete the EPS, including the EPS System and EPS Services agreed to by the State. If a period of more than five (5) years is in the State's determination required to complete all deliverables, the Contract shall be extended for the period of time determined by the State that would be needed, based on the same terms and conditions, except to the extent that the State desires to change or add terms or conditions. The Contractor shall execute any other document required by Law or reasonably requested by the State. The extension of the term of the Contract is subject to the availability of State funding, unless it is for time only.

The State will permit the extension of the Contract for a maximum of three (3) one-year terms. The Contract shall not exceed a total term of eight (8) years.

15.4 Payments to Contractor

Payments shall be made to the Contractor in accordance with Law and upon satisfaction of the applicable Milestones/Deliverables as detailed in the Payment Schedule on **"Tab 7, Payment Schedule – "Implementation Services"** and **"Tab 6, Ongoing Services"** in **"Appendix L, Cost Workbook."** The receipt of Deliverables shall be due based on the Project Schedule as agreed to and approved by the State, or as amended. Payments for all Deliverables from Implementation Services activities as well as for activities related to Ongoing Services are subject to receipt of invoices with supporting documentation attached, and subsequent review and approval by the State.

15.5 Deliverables

Contractor-deliverable activities include developing, maintaining and distributing information in electronic format. A list of minimum Deliverables is provided in **"Appendix E-1, Implementation Services Requirements"** which may be supplemented by the Offeror in its Offer. For development of all Deliverables, the Contractor is responsible for leading the activity, and the State is responsible for approving the activity. The Contractor shall use the State-approved project management, word processing, presentation and spreadsheet products (Microsoft Office) in the preparation of all correspondence, Deliverables and Work Product. The Contractor must develop Deliverables in the form and format specified by the State, developed by the Contractor and approved by the State. No work will be performed on any Deliverable associated with a payment milestone until the State Program Manager approves in writing.

15.6 Debriefing

Pursuant to HAR § 3-122-60, a debriefing is available upon request by a non-selected Offeror to inform them of the basis for the selection decision and/or the Notice of Award of a Contract under this RFP. A written request for debriefing shall be made within three (3) Business Days to the Procurement Officer after the

posting of the Notice of Award. The Procurement Officer or designee shall hold the debriefing within seven (7) Business Days to the extent practicable from the receipt date of such a written request.

15.7 Protest Procedures

A protest may be filed as provided in HRS §§ 103D-303 and 103D-701 and HAR § 3-126-3, and other applicable Hawaii Administrative Rules. Any protest shall be submitted in writing to the Procurement Officer at:

Comptroller's Office
Attention: Procurement Officer
Department of Accounting & General Services
1151 Punchbowl Street
Honolulu, HI 96813

15.8 Mistakes in Offers

15.8.1 Mistakes shall not be corrected after the Notice of Award.

15.8.2 When the Procurement Officer knows or has reason to conclude before the Notice of Award that a mistake has been made, the Procurement Officer should request that the Offeror confirm the Offer. If the Offeror alleges mistake, the Offer may be corrected or withdrawn pursuant to this Section.

15.8.3 A Priority-Listed Offeror may modify and resubmit its Offer to correct mistakes after the conclusion of the Offeror Presentations, Demonstrations and Discussions sessions but before the deadline for submission of BAFOs in Table 3 if the State requests BAFOs.

15.8.4 If Offeror Presentations, Demonstrations and Discussions sessions are not held, or if the deadline for submission of BAFOs has passed, but prior to the award, mistakes shall be corrected by the State to reflect the intended correct Offer terms whenever the mistake and the intended correct terms of the Offer are clearly evident from review of the face of the Offer, in which event the Offer may not be withdrawn.

15.8.5 If Offeror Presentations, Demonstrations and Discussions sessions are not held, or the deadline for submission of BAFOs has passed, but prior to the Notice of Award, an Offeror alleging a material mistake of fact that makes an Offer non-responsive may be permitted to withdraw the Offer if: (a) the mistake is clearly evident on the face of the Offer but the intended correct offer is not; or (b) the Offeror submits evidence that clearly and convincingly demonstrates that a mistake was made.

15.8.6 Technical irregularities are matters of form rather than substance evident from the Offer document, or insignificant mistakes that can be waived or corrected without prejudice to other Offerors; that is, when there is no effect on price, quality or quantity. If Offeror Presentations, Demonstrations and Discussions sessions are not held, or if the deadline for submission of

BAFOs has passed, the Procurement Officer may waive such irregularities or allow an Offeror to correct them in the State's reasonable discretion.

- 15.8.7** Mistakes may not be corrected after the Notice of Award has been issued by the Procurement Officer except that a mistake in an Offer discovered after the Notice of Award may be corrected or withdrawn if the State makes a written determination that it would be unreasonable not to allow the mistake to be remedied or withdrawn.

16 Confidential Information in Offers

16.1 Confidentiality

- 16.1.1** If an Offeror in good faith considers a portion of an Offer, or correspondence with the State, to contain confidential information, it shall follow the procedures set forth in this **Section** and corresponding directions in the Appendices. Costs included or required to be included in an Offer cannot be confidential and will not be withheld from public access.
- 16.1.2** Any Offeror may request the nondisclosure of designated trade secrets or other proprietary data it considers confidential. Such request shall be in writing specifically identifying the information or material asserted to be confidential and the justification for confidential treatment. The request shall be submitted with the submission of the Offer. The information or material asserted by the Offeror to be confidential to the Offeror shall be clearly marked and be submitted in or with the Offer in such manner as to be readily separable from the Offer (or remaining portion of the Offer) to facilitate public access to and inspection of the non-confidential portion of the Offer. Total Cost proposals cannot be marked confidential.
- 16.1.3** Pursuant to HAR § 3-122-58, the Procurement Officer will consult with the Attorney General regarding an Offeror's request for confidentiality of part of its Offer. The Attorney General shall determine what portions of the request are confidential under Law and what portions are not, in accordance with HRS Chapter 92F. The Procurement Officer shall communicate the Attorney General's determination to the Offeror in writing. If the request for confidentiality is denied in whole or in part, the information or material deemed to be non-confidential shall be made available as public information unless the Offeror appeals pursuant to HRS § 92F-42(1).

16.2 Redaction by the State

If the State determines, pursuant to HRS §92F-13, that any information or material in an Offer, any written question or submission by a Prospective Offeror, an Offeror or a Contractor, any response to any question or submission from a Prospective Offeror, Offeror or Contractor, and/or any Contract document is not required to be disclosed, then the State shall segregate, or redact, or otherwise cause any such information or material to not be made available as public information.

17 Subcontractors

17.1 Proposed Subcontractors

17.1.1 An Offeror may propose to use one or more subcontractors in its Offer. The EPS Contractor may propose to reduce or add more subcontractors during the course of its performance as a Contractor. The use of each subcontractor is subject to the State's prior, written approval and the subcontractor's continuing compliance with applicable Law (including HRS §103D-310(c)). With respect to each proposed subcontractor, the Offeror, or Contractor, as applicable, shall:

17.1.1.1 Identify the subcontractor by providing its full corporate name, the address of its headquarters, the address and contact information of its office providing the services, and contact information of its primary executives and key personnel who are contemplated to provide and manage the services;

17.1.1.2 Specify in detail, the services the subcontractor will perform; and

17.1.1.3 Provide sufficient information for the State to conduct reference checks on the subcontractor and its personnel, and supplement such information from time to time at the request of the State.

17.1.2 All proposed subcontractors must be approved in advance and in writing by the State pursuant to this **Section 19**. A subcontractor proposed in an Offer by an Offeror shall be deemed approved for the services identified unless the State provides notice that it has not approved the use of such subcontractor.

17.1.3 If an Offeror becomes a Priority-Listed Offeror and is invited by the State to attend one or more Presentation, Demonstration and Discussion sessions pursuant to **Section 14.2**, it has the right to request in advance that the State allow one or more of its proposed subcontractors to participate in such sessions. The State may require a proposed subcontractor to participate in such sessions.

17.1.4 The cost of the services provided by each subcontractor being proposed shall be included in the Offer, as applicable.

17.1.5 No subcontractor shall provide any service other than that approved by the State.

17.2 Contractor Responsibility for Subcontractors

The Subcontractors providing services shall meet the same service requirements and provide the same quality of service required of the Contractor and in a timely manner. No subcontract shall relieve the Contractor of its responsibilities for the Services it provides. The Contractor shall manage the quality and performance,

project management and schedules and timely start and completion of Services performed by each of its Subcontractors. The Contractor shall be solely responsible and accountable for the completion of all Services it has subcontracted.

17.3 Removal of Subcontractors

In addition to any rights the State has under Law, the State shall have the right to require the removal of a Subcontractor or any of its personnel providing or supporting services for cause. In such case, the State shall specify the deadline for such removal after consultation with the applicable Contractor. A subcontractor proposed by the Contractor to replace the removed Subcontractor shall be subject to the approval provisions of this **Section 19**.

17.4 Right to Retain Subcontractors

The State shall have the right to directly retain any Subcontractor after the expiration, termination or suspension of the Contract under which it is retained, including any subcontractor providing services subject to any part of a Contract that is terminated or suspended.

18 Additional Requirements

18.1 Additional Contractor Requirements

Each Contractor shall:

- (a) Adhere to its Contract with the State;
- (b) Provide all labor, materials and equipment necessary to meet the RFP Requirements;
- (c) Communicate RFP Requirements to its personnel and its Subcontractors' personnel, and direct and coordinate project activities to ensure that the Services progress efficiently and are completed satisfactorily and on schedule;
- (d) Obtain and maintain the insurance coverage set forth in **"Exhibit 6, Selected Supplemental Conditions."**
- (e) Ensure that all its employees and its Subcontractors' employees can communicate effectively with State employees;
- (f) Ensure that all permits are in possession, including those for its Subcontractors, that are necessary to perform the Services assigned to it;

- (g) Ensure that it is current with all payments, clearances, registrations, other fees and similar financial obligations owed to the State during the term of its Contract with the State;
- (h) Ensure that its Subcontractors' employees have and maintain during the term of applicable Services all applicable licenses, certifications and permits to perform the Services assigned to them;
- (i) Ensure that its Subcontractors and their employees are fully qualified, trained and experienced in the proposed solution set;
- (j) Fully cooperate and maintain effective communication with the State and cooperate in the resolution of problems, suspected problems or potential problems;
- (k) Resolve problems with all vendors and providers to the State not engaged pursuant to this RFP whose services are related to the EPS Services; and
- (l) Advise the Contract Administrator immediately upon discovery that it is unable or unlikely to meet the due date for a Deliverable or Work Product (as such terms are defined in). A plan for cure and a revised schedule for delivery shall be included in the above advice. The schedule shall include a statement of the impact on subsequent due dates. The Contractor shall meet with the State and agree on a final revised schedule.

18.2 Audits

18.2.1 Contractor shall maintain complete, accurate and up-to-date records and supporting documentation, including with respect to all transactions, authorizations, changes, implementations, electronic document accesses, reports, filings, analyses, procedures, controls, records, data or information created, generated, collected, processed or stored by Contractor in the performance of the Services and its obligations under the Contract (collectively, "**Contract Records**"). Contractor shall maintain such Contract Records in accordance with the terms and requirements of the Contract, through the end of the third (3rd) full year after the Contractor ceased performing the Services, or final payment was made (including with respect to Subcontractors), whichever is later (the "**Audit Period**"). Contractor shall periodically provide backup copies of the then-current versions of the Contract Records to the State Program Manager, in accordance with the schedule reasonably established by the State.

18.2.2 The State or an accounting firm or other third party generally in the business of conducting audits shall be entitled to conduct each of the audits set forth in this section and the unannounced Services Audits (each, an “**Audit**” and, collectively, the “**Audits**”) and the State shall have the right to use different State Auditors and/or external auditors to conduct different Audits. The State shall have the right, in its sole discretion, to conduct Audits at a Contractor-provided (including Subcontractors of Contractor) hosting site at any time (including without prior notice) by physical inspection or electronic auditing and at Contractor (including Subcontractors of Contractor) command centers by physical inspection and through electronic auditing, including, in each case, through computer-assisted remote access to the Contract Records. Each Audit conducted hereunder, the subject matter of which involves compliance with Law, shall consist of an audit conducted by the State or its designee and an audit conducted by the State’s external auditor, which may be conducted at different times and which, for the avoidance of doubt, shall together constitute a single Audit hereunder. Audits shall be performed at the State’s expense, unless otherwise provided herein, performed in connection with a good faith dispute as a result of a breach or default on the part of Contractor, as otherwise set forth in the provisions of this **Section 20.2**, and/or unless Audit results otherwise show misappropriation, fraud or gross negligence, in which such cases Contractor shall pay for the reasonable fees, costs and expenses incurred by the State with regard to such Audit.

18.2.2.1 Contractor shall provide all cooperation requested by the State and the following: (a) the timely cooperation of Contractor, its subcontractors and its and their respective employees with supervisory responsibility for the subject matter or part of the Services subject to the Audit and all other employees directly involved with the subject matter of the Audit; (b) making complete, accurate and current Contract Records available to the auditors on a timely basis; and (c) providing the timely availability of the above personnel and the technical and/or management information staffs (or the equivalent) of Contractor and the Subcontractors and other parties or entities who provide or support the Services for the purpose of supporting the Audit and/or providing information and materials requested by the Audit team. Contractor shall be excused from providing information otherwise required pursuant to this Section only to the extent that Contractor is prevented from providing the State with such information as a result of an enforceable obligation of confidentiality or nondisclosure owed by Contractor to a third party. Contractor shall provide the auditors with adequate private workspace in which to perform each Audit as well as access to photocopiers, telephones, facsimile machines, computer hook-ups and any other facilities or equipment needed for the performance of such Audit, which shall be reimbursed therefore by the State as incidental expenses to the extent State funds for the same are available.

- 18.2.3** Without limiting the other provisions of this section or other provisions of the RFP, in the event the State determines that an Audit is necessary with respect to the State's compliance with Law, the State shall have the right to conduct such an Audit and Contractor shall cooperate with the State in connection with such Audit. In addition to, but not by way of limitation of the foregoing, in the event of an investigation, inquiry or audit of the State by a governmental authority relating to the Services or with respect to the State's activities supported by the Services, Contractor shall cooperate with such investigation, inquiry and/or audit as requested by the State and as otherwise required by Law.
- 18.2.4** In addition to the foregoing Audits, the State has the Audit rights provided in this Section with respect to certification requirements. In the event State must conduct additional Audits in order to obtain or maintain such certifications, Contractor will reasonably cooperate with the State and permit the State to conduct additional Audits as necessary or appropriate to obtain or maintain certifications related to the conduct of the State's business.
- 18.2.5** State may perform a review and audit of the Contract Records, practices and procedures relating to any of the costs ("**Service Cost Audit**") to (a) verify the accuracy of the costs; (b) examine the financial controls, processes and procedures used by Contractor in connection with the Services; (c) examine Contractor's other financial or accounting obligations to the State; and (d) enable State to satisfy the applicable requirements of Law relating to the Services.
- 18.2.6** In the event that any Service Cost Audit reveals that any costs paid by the State exceed proper costs permitted hereunder, Contractor shall (a) reimburse the State, within thirty (30) days after receipt of notice thereof from the State, such sum, with interest from the date upon which such sum was first paid by the State (the "**Payment Date**") until the date on which Contractor makes such reimbursement, at the Prime Rate plus one percent (1%) and (b) if the over-billed costs exceed the proper amount by more than five percent (5%), pay the reasonable fees, costs and expenses incurred by the State in connection with such Service Cost Audit.
- 18.2.7** The State may perform a review and audit of the Contract Records, practices and procedures relating to any of the Services ("**Service Performance Audit**") to examine (a) the performance of the Services by Contractor; (b) Contractor's reported performance of the Services against the SLAs; and (c) the integrity and safekeeping of the State Information, and the storage and transmission of the State Information.
- 18.2.8** The State may perform a review and audit of the Contract Records, practices and procedures relating to Contractor's compliance with the security requirements, the RFP Requirements, the Contract requirements and/or as the State reasonably determines from time to time, the physical and electronic security of Contractor's operations. In the State's sole determination, the Security Audit may from time to time include interviews

with Contractor personnel having responsibility for security for the Services and information and data of the State and observations of Contractor's day-to-day operations, and the Security Audit may be conducted covertly, only with the express knowledge of key trusted Contractor personnel who shall not divulge such covert Security Audit, and/or on an unannounced basis.

- 18.2.9** As used in this section, references to Contractor shall include the Contractor's subcontractors and their personnel. Contractor shall have equivalent audit rights to those specified in this Section from its subcontractors and their personnel, and State shall be the third-party beneficiary thereof. Under no circumstances shall Contractor limit or restrict the State's Audit rights herein as a result of Contractor's subcontracting part of the Services.

18.3 Offeror Compliance with Law

- 18.3.1** The EPS Services shall be performed as specified in this RFP and in accordance with the applicable Contract and applicable Law.

- 18.3.2** Each Offeror awarded a Contract under this RFP shall comply with all Laws governing entities doing business with the State, including the following chapters and pursuant to HRS § 103D-310(c):

- (a) Chapter 237, General Excise Tax ("**GET**") Law;
- (b) Chapter 383, Hawaii Employment Security Law;
- (c) Chapter 386, Workers' Compensation Law;
- (d) Chapter 392, Temporary Disability Insurance;
- (e) Chapter 393, Prepaid Health Care Act; and
- (f) § 103D-310(c), Certificate of Good Standing ("**COGS**") for entities doing business in the State.

- 18.3.3** Pursuant to HRS § 103D-310(c), the Offeror(s) selected to be Contractor(s), at the time of Notice of Award, must be in compliance with all Laws governing entities doing business in the State. The State will verify compliance on Hawaii Compliance Express ("**HCE**"). All Offerors shall achieve such compliance prior to Notice of Award. Each Contractor shall maintain such compliance during the term of its Contract and for final payment.

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

Affairs. Each Prospective Offeror should register with HCE prior to submitting an Offer at <https://vendors.ehawaii.gov> (Hawai'i Compliance Express Home Page) and pay the annual registration fee of \$12.00 (as the fee may be changed by the State).

18.3.5 Bidder Compliance - Paper Documents. Offerors not utilizing the HCE to demonstrate compliance shall provide the paper certificates to the State POC as instructed below. All certificates must be valid on the date it is received by the State POC. Timely applications for all applicable clearances are the responsibility of the Bidder.

18.3.5.1 HRS Chapter 237 tax clearance requirement for award. Pursuant to Section 103D-328, HRS, the lowest responsive Bidder shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate shall have an original green certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate. The Tax Clearance Application, Form A-6, and its completion and filing instructions, are available on the DOTAX website: <http://tax.hawaii.gov/forms/>.

18.3.5.2 HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements for award. Pursuant to Section 103D-310(c), HRS, the lowest responsive Bidder shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue. A photocopy of the certificate is acceptable to the State POC. The DLIR Form LIR#27 Application for Certificate of Compliance with Section 3-122-112, HAR, and its filing instructions are available on the DLIR website: <http://labor.hawaii.gov/forms/>.

18.3.5.3 Compliance with Section 103D-310(c), HRS, for an entity doing business in the State. The lowest responsive Bidder shall be required to submit a Certificate of Good Standing (COGS) issued by the State of Hawaii Department of Commerce and Consumer Affairs (DCCA) - Business Registration Division (BREG). The Certificate is valid for six (6) months from date of issue. A photocopy of the certificate is acceptable to the State POC. To obtain the certificate, the Bidder must be registered with the BREG. A sole proprietorship is not required to register with the BREG and is therefore not required to submit the certificate. For more information regarding online business registration and the COGS is available at <http://dcca.hawaii.gov/breg/>.

18.3.5.4 Timely Registration. The above certificates should be applied for and submitted to the State POC as part of the Offer Response. If a valid certificate is not submitted on a timely basis

for award of a contract, an Offeror otherwise responsive, may not receive the award.

18.3.5.5 Verification of Compliance. Upon receipt of compliance documents (A-6, LIR#27, COGS), the State POC reserves the right to verify their validity with the respective issuing agency. The Contractor shall maintain their compliance throughout the term of the contract.

18.3.6 The Contract Administrator (“CA”) will conduct periodic checks to confirm that the Contractor maintains compliance on the HCE throughout the term of the Contract, including any extensions. If a Contractor Certificate of Vendor Compliance shows that its status is “Not Compliant” or “Expired” in HCE, the State has the right to withhold any and all payments to the Contractor until the Contractor’s Certificate of Vendor Compliance shows that its status is “Compliant” in HCE. Such withholding shall not be considered or constitute a breach of contract and shall not be a basis or excuse for nonperformance of the Contract by the Contractor, or entitle Contractor to claim interest for a late payment.

19 Performance Bond

The State will not require that the EPS Contractor provide a performance bond or evidence of its ability to provide a bond as part of its Offer. However, the State will require the following:

- (a) Letter of Credit
- (b) Parental Guaranty

An Offeror who has been awarded the Contract must submit these documents in order to complete execution of the Contract.

EPS Performance Standards have been outlined and specified in the “**Appendix F: Service Level Agreement Requirements.**”

20 Order and Precedence

“**Exhibit 5, State Attorney General (AG) General Conditions**” contains legal terms in the General Conditions. “**Exhibit 6, Selected Supplemental Conditions**” contains Supplement Conditions for any Contracts. **Exhibit 5** and **Exhibit 6** work together and are to be read together. In the event of a conflict between or among any provisions of **Exhibit 5** and **Exhibit 6**, the provision(s) that provide(s) the State with greater rights or greater protections, as determined by State in its sole determination in each case, shall control.



Exhibit 1: Procedures for Submitting an Offer

RFP-ERP16001

1. Procedures for Submitting an Offer

1.1. Form, Contents, and Other Requirements of an Offer

Each Offer shall be in the form set forth in, and meet the requirements of, the Appendices. Without limiting the foregoing, each Offer shall:

1.1.1. Include a transmittal letter ("Appendix A, Offeror Response Form, Section 1.0 Offer Transmittal Letter").

1.1.2. Include an Offer Form, OF-1 ("**Appendix A, Offeror Response Form, Section 2.0 Offer Form, OF-1**"), with the exact legal name of the Offeror as registered with the Department of Commerce and Consumer Affairs (if applicable), the Offeror's business address, and the name, remittance address, as well as email address, telephone and fax number(s) of the person the State POC should contact regarding Offeror's Offer. The Offer shall be signed as applicable by: (a) the owner of a sole proprietorship, (b) one or more members of a partnership, (c) one or more members or officers of each firm representing a joint venture duly authorized to submit Offers on the respective firm's behalf, (d) one or more officers of a corporation duly authorized to submit Offers on the corporation's behalf, or (e) agents or other persons or entities authorized to submit Offers on its or their behalf.

1.1.3. Include the authorized signature of the Offeror on the first page of the Offer Form, OF-1. Ink signatures are not required for electronic submission of an Offer but shall be required before a Notice of Award can be issued to the Offeror. The submission of an Offer shall constitute the Offeror's agreement to be bound by electronic signature as set forth in Offer Form, OF-1.

1.1.4. Organize the Offer into sections as set forth in "**Appendix A, Offeror Response Form,**" following the exact format specified therein, including the use of all titles, subtitles, and numbering, with bookmarks separating each section. Each section must be labeled and pages numbered sequentially for the entire Offer and not by section.

1.1.5. Be provided in both Adobe Acrobat format (compatible with Adobe Reader version 10 or greater) and native Microsoft Word, Excel and Project file formats, as applicable.

1.1.6. Include an electronically linked table of contents and bookmarks for sections and subsections using Microsoft Office functionality.

1.1.7. Files from an Offeror over 50MB in size, shall be split into a series of volumes (not larger in size than 50MB) to ensure convenient management and trouble-free uploading and downloading, and include the RFP Number and the Offeror name in the file name. The file names of large files split into volumes must also include the volume number. Offeror shall also bookmark and provide the table of contents in each volume.

1.1.8. Unless otherwise specified in this RFP, include with respect to all prices in an Offer, applicable Federal, State and local taxes. The State will interpret all prices in an Offer to be inclusive of such taxes. The failure of an Offeror to include

taxes in the prices in its Offer will result in its proposal being evaluated and potentially awarded at the prices quoted.

2. Requirements for Offer Documents

In submitting an Offer, each Offeror shall organize the Offer, for the convenience of the State's evaluation, into subsections using the section number references in the titles of the subsections below with respect to the subject matter of the relevant subsection.

2.1. Offer Subsections

2.1.1. Section 1.0: Offer Transmittal Letter

Requirements and Instructions for completing the Offer Transmittal Letter are detailed in "**Appendix A, Offeror Response Form, Section 1.0 Offer Transmittal Letter.**"

2.1.2. Section 2.0: Offer Form, OF-1

Requirements and Instructions for completing the Offer Form, OF-1 are detailed in 1.1.2 above and the OF-1 Form is provided in "**Appendix A, Offeror Response Form, Section 2.0 Offer Form, OF-1.**"

2.1.3. Section 4.0: Executive Summary

Requirements and Instructions for completing the Executive Summary are detailed in "**Appendix A, Offeror Response Form, Section 3.0 Executive Summary.**"

2.1.4. Section 5.0: Administrative Requirements Response

Requirements and Instructions for completing the Administrative Requirements Response are detailed in "**Appendix A, Offeror Response Form, Section 4.0 Administrative Requirements Response.**"

2.1.5. Section 6.0: Offeror Qualifications

Requirements and Instructions for completing the Offeror Qualifications Response are detailed in "**Appendix A, Offeror Response Form, Section 5.0 Offeror Qualifications.**" This section shall include the Offeror's response to:

- (a) Minimum Offeror Qualifications ("**Appendix A, Section 5.1 Offeror Minimum Qualifications**");
- (b) Offeror References; and
- (c) Offeror Background and Experience, specifically including information directly relevant to this RFP's Project Organization and Staffing requirements.

The State will review the Offeror's Offer to determine whether the Offeror meets the Offeror Minimum Qualification requirements. Failure to meet Offeror Minimum

Qualification requirement(s) may result in the Offer being deemed non-responsive and determined unacceptable.

2.1.6. Section 7.0: Business Solution

Requirements and Instructions for completing the Business Solution Response are detailed in “**Appendix A, Offeror Response Form, Section 6.0 Business Solution.**” This section shall include the Offeror’s response to the business solution requirements.

2.1.7. Section 8.0: Certification

Requirements and Instructions for completing the Certification Response are detailed in “**Appendix A, Offeror Response Form, Section 7.0 Certification.**” This section shall include the Offeror’s response to the certification requirements.

2.1.8. Section 9.0: Confidential Information

Requirements and Instructions for completing the Confidential Information Response are detailed in “**Appendix A, Offeror Response Form, Section 8.0 Confidential Information.**” This section shall include the Offeror’s response to the confidential information requirements.

2.1.9. Section 10.0: Cost and Hosting Option

Requirements and Instructions for completing the Cost Response are detailed in “**Appendix A, Offeror Response Form, Section 9.0 Cost.**” Offerors shall propose all firm-fixed prices (“**FFP**”), time and materials (“**T&M**”) and composite rates as required in this section. Instructions and requirements for completing the required Cost Workbook are listed in “**Appendix A, Offeror Response Form, Section 9.0 Cost,**” which refers to “**Appendix L, Cost Workbook.**” The Cost Workbook shall be completed using the Hosting Option elected by the Offeror. Cost information shall be limited to the Cost Response only and not included in any other section of the Offer.

2.1.10. Section 11.0: Offer Checklist

Requirements and Instructions for completing the Offer Checklist Response are detailed in “**Appendix A, Offeror Response Form, Section 10.0 Offer Checklist.**” To aid the Offeror in completing the response, an Offer checklist has been included, which shall be completed as part of the Offer.



Exhibit 2: Offeror's Library Instructions

RFP-ERP16001

In order for a vendor to participate in the RFP Process, submit an Offer, and have it evaluated, it must sign and deliver an NDA to the State as set forth below. The Offerors authorized representative shall submit a request to the State POC for access to the Offerors Library via e-mail. The State POC will electronically distribute an NDA (see Attachment A) to the offerors authorized representative to be signed electronically using the State's eSign service. Upon its receipt of the electronically signed NDA, the State shall issue log-in credentials to the vendor's POC, which shall be sent to it at the email address provided by the vendor at the time the NDA is submitted.

Within five (5) Business Days of receiving the log-in credentials email from the State, the vendor shall access the Offerors Library. After the fifth (5th) business day, the State shall revoke the log-in credentials if no activity is observed. If the State revokes such log-in credentials, the vendor shall cease to be a Prospective Offeror. After such revocation, a vendor may re-qualify as a Prospective Offeror if it resubmits the electronically signed NDA as set forth above. The State shall not be responsible for the vendor's failure to use or receive information from the Offeror's Library arising from a failure of a vendor to submit the NDA on a timely basis so as to receive and maintain log-in credentials. No Prospective Offeror shall permit any other party to use its log-in credentials. Any other party (including a proposed subcontractor) must submit an electronically signed NDA and receive its own log-in credentials from the State.

ATTACHMENT A

* * *

DIRECT ALL QUESTIONS OR ISSUES RELATING TO THE ACCESSIBILITY OF THE ATTACHED CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT, AND REQUESTS FOR ACCOMMODATIONS FOR PERSONS WITH DISABILITIES IN CONNECTION WITH THIS AGREEMENT, TO:

DEBRA A. GAGNE, TELEPHONE (808) 586-1944 OR EMAIL ADDRESS
ETS.ERP@HAWAII.GOV

* * *

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT ("Agreement") is made and entered into as of _____, 2016 (the "**Effective Date**") by and between the State of Hawaii ("**State**"), and _____, a _____ organized and existing under the laws of _____, with offices at _____ ("**Prospective Offeror**") (each, a "**Party**" and together, the "**Parties**").

WITNESSETH:

WHEREAS, the State has issued a Request for Proposals for an Enterprise Payroll Solution for the State (the "**RFP**") and shall conduct an RFP process for the same (the "**RFP Process**");

WHEREAS, Prospective Offeror is potentially interested in submitting an offer to respond to the RFP;

WHEREAS, the State owns, has rights to, and/or controls "**Confidential Information**" (as such term is defined below) and certain data;

WHEREAS, the State is willing to disclose to Prospective Offeror certain Confidential Information through the "**Offeror's Library**" (as such term is defined in the RFP) on the terms and conditions set forth herein;

WHEREAS, the State requires a Prospective Offeror to maintain such Confidential Information and data in confidence and protect it from unauthorized use and disclosure and use it only in accordance with the terms hereof, and Prospective Offeror agrees to do so; and

WHEREAS, Prospective Offeror acknowledges that unauthorized disclosure or use of such Confidential Information or data would cause irreparable harm to the State.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the State and Prospective Offeror hereby covenant and agree as follows:

1. Definitions

1.1 **"Affiliates"** means any person, including any individual, corporation, subsidiary, affiliate, partnership, association, business, organization or other entity that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a Party and/or such entities. The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an individual or entity, whether through the ownership of fifty percent (50%) or more of voting shares (or their equivalent), by contract or otherwise.

1.2 **"Confidential Information"** means materials and information relating to the State's information technology systems referred to in the Offeror's Library; the State PII; other material or information labeled or identified as confidential to the State by the State or its professional advisors or which by its nature is confidential to the State; and the Prospective Offeror's evaluations, assessments and reports regarding any of the foregoing ("**Reports**").

1.3 **"Prospective Contractor Assisting Entities"** means the Prospective Offeror and its Affiliates and its and their prospective subcontractors.

1.4 **"State PII"** means any information relating to an identified or identifiable natural person, including, without limitation, government officials, employees, agents, citizens and residents of, and visitors to, the State, and any other person or entity who provides such information to the State. Such information includes, without limitation, individual's names, geographic addresses, telephone numbers, email addresses, Social Security numbers, driver's license numbers, credit or debit card numbers, and information concerning insurance, health, and other care and related information, insurance policy numbers (including, without limitation, medical and life insurance policy numbers), personal health information, medical records and financial information, stored in or accessed through (a) the State's information technology systems; (b) the information technology systems or other storage systems or means of Prospective Offeror, or a Prospective Contractor Assisting Entity, arising out of or in connection with the RFP Process or the services to be provided thereunder; and/or (c) the information technology systems or other technology systems or means of a vendor or provider of goods or services to the State.

2. Use and Disclosure of Confidential Information

2.1 Prospective Offeror represents, warrants and covenants to the State that Prospective Offeror shall use the Confidential Information only for the limited purpose of evaluating the RFP as part of the RFP Process and preparing offers in response to the RFP in accordance with the provisions of this Agreement and the RFP. Prospective Offeror further represents, warrants and covenants to the State that Prospective Offeror shall maintain the Confidential Information of the State in complete confidence and secrecy and, subject to the further provisions of this Agreement, shall take all reasonable steps and precautions necessary (including those reasonably directed by the State) to carefully safeguard and prevent the disclosure of the Confidential Information and Reports thereto, except only to the Prospective Contractor Assisting Entities, and to employees, consultants and agents (provided, that each such Prospective Contractor Assisting Entity, employee, consultant and agent shall execute or be and remain subject to a confidentiality agreement with provisions not less protective than those herein)

of Prospective Offeror and the Prospective Contractor Assisting Entities on a need-to-know basis; provided, however, that each of the Prospective Offeror and the Prospective Contractor Assisting Entities shall, at a minimum: (a) take measures to protect the Confidential Information that are no less protective than the measures the Prospective Offeror or Prospective Contractor Assisting Entity, as applicable, uses to protect the confidentiality of and prevent the disclosure of its own confidential and proprietary information of like importance; and (b) maintain the Confidential Information and Reports in a physically secure location, and in the case of electronic files, in a secure computer system. Prospective Offeror shall be responsible for any breach of this Agreement by any of its Prospective Contractor Assisting Entities, or by its or its Prospective Contractor Assisting Entities' employees, consultants or agents. Without limiting the foregoing, Prospective Offeror shall not provide, make available or permit access to any Confidential Information to any of the Prospective Contractor Assisting Entities, consultants or agents if otherwise prohibited by any other agreement between the Parties, or if not so prohibited, shall provide, make available or permit access to any Confidential Information only in accordance with any applicable restrictions or conditions as are set forth in any such agreement.

2.2 Without limiting any of the other provisions hereof, and subject to the provisions of **Sections 2.1** and **2.3**, Prospective Offeror represents, warrants and covenants to the State that Prospective Offeror shall not, and shall not permit or assist others to directly or indirectly, without the prior express written consent of the State, (a) by electronic means or otherwise (including, without limitation, on or through the Internet), disclose, copy, sell, transfer, publish, distribute, license, transmit, provide access to, make available or otherwise release any part of the Confidential Information to any person or entity other than a person authorized to receive the same hereunder, or (b) knowingly or negligently misappropriate or use the Confidential Information of the State for its own benefit or for the benefit of others, except in conjunction with the RFP Process or in accordance with the provisions of **Section 2.1**.

2.3 At any time, at the State's request, Prospective Offeror shall, and shall cause the Prospective Contractor Assisting Entities to, return or destroy, as specified by the State from time to time, all copies of the Confidential Information and Reports. With respect to any electronic or computer copies or records of or relating to the same, without limiting the foregoing, Prospective Offeror shall immediately shred, permanently delete or otherwise irretrievably destroy and render unreadable all such copies or records from all computers, servers and storage devices and media owned by, or operated by or for, Prospective Offeror, except to the extent that through the exercise of reasonable commercial efforts the same cannot be removed from databases or records that are not maintained specific to the State.

2.4 Prospective Offeror acknowledges that as between the Parties, the State owns and shall retain ownership of the State intellectual property rights. Nothing contained in this Agreement shall be construed as an assignment of, or the granting or conferring of, any license, express, implied or otherwise, of the State's intellectual property rights, except only to the extent any State intellectual property rights are included or embodied in Confidential Information disclosed by the State hereunder, and for the avoidance of doubt, Prospective Offeror's use of any such intellectual property rights shall be only as permitted hereunder.

2.5 After execution of this Agreement by both Parties, the Prospective Offeror will receive authentication credentials from the State or its professional service advisors that will enable the Prospective Offeror to access the Offeror's Library, subject to any additional provisions set forth in the RFP and/or the Offeror's Library. Prospective Offeror's rights to use such credentials shall be governed by the terms hereof and as may be further set forth in the RFP and/or the Offeror's Library.

3. Duration

Prospective Offeror shall, and to the best of its commercially reasonable ability each of the Prospective Contractor Assisting Entities shall, maintain the Confidential Information in confidence pursuant to the terms hereof in perpetuity (or the maximum period permitted by applicable law), except to the extent that, through no wrongful act of Prospective Offeror or a Prospective Contractor Assisting Entity, a portion of the Confidential Information (excluding State PII), as evidenced by written proof: (a) is or becomes available to the public and whose technical and commercial significance is made available to the applicable trade or portion of the public by the State; (b) is already in the possession of Prospective Offeror and is not subject to any agreement of confidence or nondisclosure between the Parties hereto; (c) is disclosed to Prospective Offeror on a non-confidential basis by a third party who was legally free to do so; or (d) is independently developed by Prospective Offeror; provided, further, that for the avoidance of doubt, all State PII shall at all times constitute Confidential Information even if any State PII would otherwise be excluded from the definition of "Confidential Information" pursuant to subsections (a), (b), (c) and/or (d) of this Section. In the event that Prospective Offeror or any Prospective Contractor Assisting Entity is ordered to disclose any Confidential Information of the State by a court, administrative agency or other governmental body with jurisdiction over Prospective Offeror or Prospective Contractor Assisting Entity, as applicable, Prospective Offeror, and/or such Prospective Contractor Assisting Entity, as applicable, shall, unless prohibited by applicable law, first provide the State with prompt written notice of such required disclosure and will take reasonable steps to allow the State to seek a protective order with respect to the confidentiality of the information required to be disclosed. Prospective Offeror and Prospective Contractor Assisting Entity will promptly cooperate with and assist the State in connection with obtaining such protective order at the State's reasonable expense.

4. General Provisions

4.1 This Agreement constitutes the entire and exclusive agreement between the Parties with respect to the subject matter hereof and shall not be amended, modified or changed, nor any right waived, except by an instrument in writing duly executed and delivered by the Party sought to be charged therewith. This Agreement may not be assigned by either Party, in whole or in part, to any third party without the prior express written consent of the other Party. This Agreement is binding upon and shall inure to the benefit of each Party hereto, and his, her or its respective heirs, executors, administrators, successors and permitted assigns. No modification to this Agreement shall be binding unless made in writing and signed by the Parties hereto. All references to Sections are to Sections in this Agreement. The Parties agree that this Agreement is not and shall not be amended or otherwise modified by any provision of or use of any website or software, or by any electronic or online agreement regardless of its terms. It may be amended only in writing, setting out the specific modification(s), signed by the handwritten signatures of both parties, and executed and delivered in accordance with the provisions of this Agreement. An original handwritten signature meeting the requirements in the preceding sentence and transmitted by facsimile (including "pdf" or "tif" file (sometimes referred to tiff) by email) shall be considered a handwritten signature for purposes of this Agreement. Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply. The headings used herein are for reference only and shall not constitute part of this Agreement or in any way affect its meaning or interpretation.

4.2 All confidential information disclosed hereunder is provided on an "as is" basis. The state makes no warranties of any kind with respect to its confidential information, and disclaims all warranties, whether implied or statutory or arising out of custom or course of dealing or usage or in the trade, including, without limitation, warranties of merchantability or fitness for a particular purpose. The state shall not be liable to provider for any consequential, punitive, incidental, exemplary or special damages arising out of activities related to this agreement.

4.3 All notices or other communications given pursuant to this Agreement by one Party to the other Party shall be in writing and deemed given when: (a) delivered personally by messenger (with acknowledgment of receipt); (b) sent by telecopier (with receipt confirmed), provided a copy is also mailed by certified or registered mail, postage prepaid, return receipt requested; or (c) when received by the addressee, if sent by Express Mail, Federal Express or other acceptable express delivery service (receipt requested), in each case to the appropriate addresses and telecopier numbers set forth below (or to such other addresses and telecopier numbers as a Party may designate as to itself by notice to the other Party), or seven (7) days after mailing by certified or registered United States mail (or that of the country of such Party's place of business or residence specified below), postage prepaid, return receipt requested, to the addresses set forth after the signature lines of this Agreement.

4.4 To the extent that any provision, portion or extent of this Agreement is found invalid, illegal or unenforceable, then that provision, portion or extent shall be severed or deleted herefrom or limited so as to give effect to the intent of the Parties insofar as possible and the remainder of the Agreement shall remain binding upon the Parties. The invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other remaining provisions. Any waiver of any provision of this Agreement, or a delay by either Party in the enforcement of any right hereunder, shall neither be construed as a continuing waiver nor create an expectation of non-enforcement of that or any other provision or right.

4.5 Because of the unique and trade secret nature of the Confidential Information, the State's intellectual property rights and the valuable proprietary interest of the State in the same, it is understood and agreed by the Parties that the State's remedies at law may be inadequate and that the State shall be entitled to apply for and obtain injunctive and other equitable relief, in addition to all remedies available to the State at law, in equity or hereunder, in any court of competent jurisdiction to restrain the breach or threatened breach of, or otherwise to specifically enforce, any of the terms of this Agreement.

4.6 If the State is the prevailing Party in any civil or administrative action, or proceeding for relief, for breach of, or to enforce, this Agreement, it shall be entitled to recover from Prospective Offeror in that action or proceeding, if permitted therein, or otherwise in a separate proceeding, all of its (the State's) attorneys' fees (including, without limitation, allocated costs of State attorneys), costs, expenses, fees and disbursements, and the fees and expenses for expert witnesses and expert opinions, incurred before and during such action or proceeding for relief.

4.7 This Agreement shall be governed by and construed in accordance with the internal laws of the State of Hawaii, without giving effect to conflicts of laws principles. Each Party hereby submits to the jurisdiction of the state and federal courts located in the City and County of Honolulu, for any action or proceeding relating to this Agreement, and expressly waives any objection it may have to such jurisdiction or the convenience of such forum. Service of process at a Party's place of business or place of residence (in the case of natural persons) specified below, even if outside of Hawaii, shall be sufficient to establish the Hawaii court's jurisdiction.

4.8 The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement (and any applicable or relevant provision) shall be construed as if jointly drafted by the Parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any one such Party by virtue of the authorship of any of the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

STATE OF HAWAII
("State")

("Prospective Offeror")

By: _____

By: _____

Print
Name: _____

Print
Name: _____

Print
Title: _____

Print
Title: _____

ADDRESS:

Honolulu, HI _____

ADDRESS:

Attn: _____

Attn: _____

Title: _____

Title: _____

Fax: _____

Fax: _____



Exhibit 3: Relationship Management

RFP-ERP16001

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1. Relationship Management Overview

This Exhibit (Relationship Management) sets forth the roles and responsibilities of the parties for the relationship processes and activities provided under the Contract as part of the EPS Services. These processes and activities, as further detailed in this Exhibit, are required to provide and support the overall relationship between the State of Hawaii (State) and the Contractor.

1.1 Relationship Management

The State recognizes that relationship management processes are an essential component for successful ongoing State-Contractor relationship satisfaction. The State requires a relationship with the Contractor based on a number of key ingredients, including:

- (a) Mutual trust and respect
- (b) Excellent communication between both parties
- (c) Well-defined objectives and service levels
- (d) Appropriate governance structures; and
- (e) Well-defined roles and responsibilities.

The Contractor relationship management team will work with the State team to achieve the State relationship goals and objectives, including:

- (a) Delivery of high-quality services to support the State business needs
- (b) Continued high customer satisfaction from all technical and operational users of services
- (c) Continuous recommendation of improvements to the functionality, creation and delivery of services –to the extent that the State business objectives would be better served
- (d) Development of the business rationale and benefits of any proposed changes and communication thereof to the team and other State stakeholders, as appropriate
- (e) Working within the mutually-agreed upon structure regarding processes and procedures
- (f) Assisting the State in its planning activities, as required
- (g) Ensuring sufficient and continued communication.

2. Key Roles

The State and Contractor will each establish and maintain relationship management teams of senior business and technical professionals that, throughout the Contract life cycle, will:

- (a) Determine and protect the business interests and reputation of the State
- (b) Dedicate sufficient time and resources to make the relationship a success
- (c) Support the State strategic and tactical planning processes
- (d) Monitor Contractor performance metrics including contracted Service Level Agreement (SLA) Requirements (i.e., schedule, testing, scope, and additional options).

Key Personnel will be managed as set forth in the Contract which includes the RFP and accepted Offer/BAFO. To ensure consistency of service delivery and minimize personnel learning curves, Contractor agrees to minimize the amount of turnover in its staff assigned to the State's account to the goal of less than ten percent (10%) per Contract Year.

2.1 Executive Sponsors

Each party shall designate an individual (for the State, Executive Sponsor and for Contractor, the Contractor Senior Executive), who shall be responsible for the overall success of the Contract and be each party's primary executive point of contact for all matters relating to the Contract.

The Contractor Senior Executive shall be at a minimum:

- (a) Knowledgeable about the services, the State EPS Program, and Contractor/subcontractor and Third Party services and how all of these integrate to provide the services for the State.
- (b) Responsible for approving changes to scope, schedule and costs of the Program.
- (c) The primary relationship manager between the Contractor and the State
- (d) Responsible for ensuring services are delivered consistently and seamlessly across all service areas and the State organizations
- (e) Experienced at providing services equal in size and scope to those of the State
- (f) Otherwise acceptable to the State.

The Contractor Senior Executive shall be vested by Contractor with all necessary authority to act for the Contractor in connection with all aspects of the Contract.

2.2 Program Managers

Each party shall designate an individual (for the State, ERP Program Manager and for Contractor, the Contractor Program Manager), who shall be each party's primary point of contact for all day-to-day matters relating to the Contract.

The Contractor Program Manager shall be at a minimum:

- (a) Knowledgeable about the requirements and activities of their business processes
- (b) Knowledgeable about the Services, phases, subcontractors and Third Parties and how they impact service delivery and other State programs
- (c) Experienced at providing services equal in size and scope to those of the State
- (d) Otherwise acceptable to the State.

2.3 Additional Relationship Management Functions

The following are additional State and Contractor relationship management functions that are essential to managing the relationship for which individuals are to be designated (for the State, Contract Administrator, and for Contractor, individual who shall be identified). Specific Contractor individuals shall be assigned, specifically in the areas of:

- (a) Performance Management
- (b) Contract Management

2.3.1 Performance Management

The Performance Management function takes overall responsibility for ensuring that Contractor performance meets business requirements and recommends continuation, improvement or problem resolution to ensure that business requirements are met. This function includes:

- (a) Leading the measurement process by which SLAs are assessed
- (b) Reviewing and monitoring performance, cost workbook and delivery schedule, recommending corrective action and facilitating the development of improvement plans.

2.3.2 Contract Management

The Contract Management function manages the contractual relationship between the State and Contractor. This function includes:

- (a) Leading and facilitating contract activities from the point that the contract is signed through Contractor transition and ongoing operations
- (b) Monitoring and coordinating the approval activities specifically tied to contracted deliverables, invoicing, and payments.
- (c) Monitoring compliance with contract terms and conditions and providing recommendations to resolve issues related to non-compliance

Create, negotiate and incorporate amendments into the Contract in accordance with the terms and conditions of the Contract, if needed.

- (ii) Coordinate the contract negotiations/renegotiations to accommodate changes, if needed.

3 Governance Process

3.1 Governance Structure

The following governance committees define the framework of the participants, and the responsibilities and activities of those roles that are responsible for the administration of the governance processes. The State shall comprise the majority of members for each of the committees, teams, and groups described below.

3.1.1 Enterprise Payroll Solution Executive Team

The Executive Team will be comprised of senior decision-makers from each party, which includes the State's Executive Sponsor and designees and the Contractor Senior Executive and designees who will meet to discuss high-level strategic and operational issues relating to the Contract.

The Executive Team shall meet at least quarterly, and responsibilities shall include the following:

- (a) Address relevant high-level issues appropriate for a board-level discussion
- (b) Address major relationship and alignment issues and disputes that have been escalated to this level
- (c) Approve operational and staffing changes to the services being provided by the Contractor.

For each such meeting, the parties shall agree upon the location for the meeting in advance. Prior to each such meeting, Contractor shall prepare a suggested agenda, with input from the State Executive Sponsor. Contractor shall deliver the agreed-upon agenda to the State at least ten (10) Business Days prior to the meeting. Further, either party from the Executive Team may invite industry subject matter experts to participate in such meetings to facilitate information exchange and increase the value of the strategies discussed, as appropriate.

3.1.2 Enterprise Payroll Solution Steering Committee

The Enterprise Payroll Solution Steering Committee shall be responsible for providing input and advice concerning the overall business and technology relationship between the parties, including the effectiveness and value of the services provided by Contractor and guidance to improve such effectiveness and value.

The Enterprise Payroll Solution Steering Committee shall be chaired by State's Executive Sponsor. Its members shall include executives from the various jurisdictions or their designees, the Contractor Program Manager, and Contract Administrator; and from the State shall include the Chief Information Officer, Project Sponsor, Program Manager, and Contract Administrator. As a guideline, the Steering Committee membership should be between 6-8 people (or as required/agreed), with balanced representation from each party.

The Enterprise Payroll Solution Steering Committee shall meet in person at State facilities on a monthly basis at a minimum or more often if required by the State (i.e., weekly), and responsibilities shall include the following:

- (a) Providing status of planned initiatives and discussing initiatives that may impact capacity requirements
- (b) Reviewing performance and capacity status and approving plans and recommendations
- (c) Defining and recommending innovation and improvement opportunities for more effective use of the services and how such innovative ideas and strategies can effectively impact services to the State
- (d) Addressing problems, disputes, incidents or requests for operational changes that have been escalated to this level
- (e) Adjusting plans and projects as directed by the State
- (f) Addressing such other matters as one party may bring to the other (i.e., personnel).

Prior to each such meeting, Contractor shall prepare a suggested agenda, with active input and review and approval from the State's Executive Sponsor. Contractor shall deliver the agreed-upon agenda to the State at least five (5) Business Days prior to the meeting, if such meetings take place on a monthly basis. Contractor shall make available its senior management personnel to answer questions from the State's senior management personnel regarding the agenda items for such meeting. Further, either party may invite industry subject matter experts to participate in such meetings to facilitate information exchange and increase the value of the strategies discussed.

3.1.3 Project Management Office

The Project Management Office, comprised of program/project management from the State and Contractor, shall be responsible for overseeing the overall operation of the Contract including the integration of the individual services provided by Contractor or Third Parties to service the EPS Program, reviewing Contractor performance and addressing tactical issues. Issues that cannot be resolved by this committee shall be escalated to the EPS Steering Committee.

The Project Management Office shall be chaired by the State Program Manager. Its members shall include from the State, the State Project Manager,

Business Process Owners, and functional and technical leads; and include from the Contractor, the Contractor Program Manager and functional and technical leads. Any additional temporary Contractor attendees will be agreed between the parties in advance of the meetings.

The Project Management Office shall meet weekly or more often if required by the State at the project team facilities, and responsibilities shall include the following:

- (a) Reviewing the State's satisfaction with the Contractor Key Personnel
- (b) Reviewing project forecasts and action items
- (c) Addressing operational and service delivery issues arising during the previous week
- (d) Reviewing root cause analysis of any previous issues
- (e) Discussing Contractor's compliance with the SLAs for the services
- (f) Reviewing problems, disputes, incidents and requests for changes
- (g) Reviewing all financial arrangements, including invoices submitted by Contractor
- (h) Addressing problems, disputes, incidents, and requests for changes that have been escalated to this level
- (i) Planning for the future
- (j) Addressing such other matters as one party may bring to the other.

Prior to each such meeting, Contractor shall prepare a suggested agenda, with active input and review and approval from the State Program Manager. Contractor shall deliver the agreed-upon agenda to the State at least two (2) Business Days prior to the meeting. Contractor shall make available its program/project management personnel to answer questions from the State's project management personnel regarding the agenda items for such meeting. Further, either party may invite industry subject matter experts to participate in such meetings to facilitate information exchange and increase the value of the strategies discussed.

3.2 Day-to-Day Management Processes

During the planning phase, and on an annual basis thereafter, Contractor and the State will agree upon points of contact and a reporting structure covering day-to-day operations and reviews of Contractor's performance. These may include technical, financial, and SLAs performance reviews, terminations and/or extended absences, or reviews of other issues that may arise. A regular meeting schedule will be required for the different reporting levels established, with ongoing twenty-four (24)-hour access to all of Contractor points of contact when required. These day-to-day points of contact

and reporting structures shall be in addition to those described in the relationship governance structure described below.

3.3 State-Contractor Communications

Communications between the State and Contractor shall, wherever possible and practicable, be face to face. Video or audio conferences will be the second choice of communication medium. Where video or audio conferences are not practical, email will be the alternative communication medium.

All formal meetings whether face to face or video or audio conferences shall:

- (a) Be set with a written agenda per above in advance and have an identified chairman and note taker. The agenda should have clear directions of location and/or medium to be used; date and timings of meeting; topic items to be covered and expected outcome for each topic; owners of each topic; and any pre-work to be undertaken by topic owners or attendees.
- (b) Be documented with minutes by the note taker, and such minutes to include high-level summaries of key discussion points and future actions with timings and persons responsible for the actions. Minutes should be distributed to attendees and missing attendees and any persons with actions to be taken. At the State's discretion, video and audio recordings may be conducted.
- (c) Identify the person who shall be responsible for organizing the next meeting.

3.4 Governance Processes

Below are the governance processes the State and the Contractor will address to manage the relationship. Roles and responsibilities associated with the following key governance processes are described in Table 1:

- (a) Strategy and Planning
- (b) Contract Management
- (c) Relationship Management
- (d) Financial Management
- (e) Performance Management
- (f) Resource and Talent Management.

4 The State and the Contractor Governance Functions

The following table identifies a number of roles and responsibilities associated with the key governance processes that the State and Contractor shall address. Nothing in this table should be construed to limit the responsibilities of the parties.

Table 1. Governance Functions and Responsibilities

	Contractor	State
Strategy and Planning	Contractor	State
1. Chair semi-annual Executive Team meetings.		X
2. Provide support and commitment of State executives to participate in semi-annual Executive Team meetings.		X
3. Provide support and commitment of Contractor executives to participate in semi-annual Executive Team meetings.	X	
4. Provide the Contractor with the State strategic business and technology imperatives that require Contractor support.		X
5. Provide input and recommendations in connection with the development of the State strategic business plans, as requested by the State.	X	
6. Provide technical solutions, expertise, and advisory services that are appropriately aligned with the State's needs and business focus.	X	
Contract Management	Contractor	State
7. Monitor contract terms and management processes.	X	X
8. Monitor and revise contracts as applicable and review recommended contract modifications.		X
9. Provide change requests and justification, as applicable.	X	
10. Provide change request impact analysis, level of effort, and cost estimation, as applicable.	X	
11. Provide change orders, work order authorizations and termination assistance requests, as applicable.		X
12. Implement change orders, work orders and termination assistance.	X	
Relationship Management	Contractor	State
13. Provide support and commitment of the State executives to the relationship.		X
14. Provide support and commitment of the Contractor executives to the relationship.	X	
15. Manage internal dispute escalation and resolution on behalf of the Contractor.	X	
16. Manage internal dispute escalation and resolution on behalf of the State.		X
Financial Management	Contractor	State
17. Monitor and manage State financial administration practices and procedures associated with the Contract.		X
18. Monitor and manage Contractor financial administration practices and procedures associated with the Contract.	X	
19. Provide invoices in accordance with the Payment Schedule and State invoice requirements.	X	
20. Identify billing disparities and work with Contractor to identify corrective actions.		X

21. Implement corrective actions.	X	
22. Maintain an audit trail and records of all costs incurred under the Contract.	X	
23. Proactively ensure that all unnecessary costs are eliminated, and that costs are managed in an efficient manner.	X	
24. Approve all cost controls.		X
Performance Management	Contractor	State
25. Manage and coordinate all delivery aspects of the Contract.	X	
26. Provide periodic written performance management reports to the State on SLAs and conduct periodic scheduled and ad hoc review meetings as required.	X	
27. Ensure the Contractor understanding of and adherence to SLAs and any implementations of required changes to achieve such SLAs.	X	
28. Ensure the Contractor performance meets business and all other contract requirements.	X	
29. Conduct a formal review and report on root causes of service delivery or other relationship related matters.	X	
Resource Management	Contractor	State
30. Ensure that staffing, technology and skill levels are adequate to achieve contract objectives.	X	
31. Inform the State of any potential Contractor Key Personnel staffing changes and of any new personnel assignments planned for new projects.	X	
32. Review and authorize the Contractor Key Personnel changes to the Program.		X
33. Hire and manage subcontractors for delivery of services, if applicable.	X	
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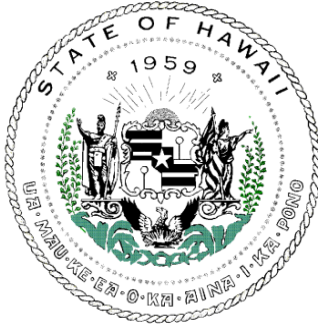


Exhibit 4: General Provisions for Goods and Services

RFP-ERP16001

GENERAL PROVISIONS
FOR
GOODS AND SERVICES

Attached are the General Provisions, dated July 2013 which are made a part of all offers in response to the solicitation for goods and services. These provisions are in addition to the special provisions provided in the individual solicitations.

Offerors are cautioned to read and understand all the terms and conditions contained in the General Provisions as these provisions will also be made part of the contract for goods and services.

**GENERAL PROVISIONS
FOR
GOODS AND SERVICES**

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1. **DEFINITIONS OF TERMS**

Terms as used in these General Provisions, unless the context requires otherwise, shall have the following meaning:

a. **BID**

Bid means any offer submitted in competitive sealed bidding or in the second phase of multi-step bidding.

b. **BID PROPOSAL GUARANTY OR SECURITY**

The security when required, furnished by an offeror with his offer to ensure that the offeror will enter into the contract with the STATE and execute the required contract and payment bonds covering the work contemplated, if his offer is accepted.

c. **CONTRACT**

Contract means the combination of the solicitation, including the instructions to offerors, the specifications or scope of work, the special provisions, and the general terms and conditions; the offer and any best and final offers; and any amendments to the solicitation or to the contract; and any terms implied by law.

d. **CONTRACT BOND**

The approved form of security furnished by the CONTRACTOR and his surety or sureties or by the CONTRACTOR alone, to ensure completion and satisfactory performance of the contract in accordance with the terms of the contract and to guarantee full payment of all claims for labor, materials and supplies furnished, used or incorporated in the work.

e. **CONTRACTOR**

An individual, partnership, firm, corporation, joint venture or other legal entity undertaking the execution of work under the terms of the contract with the STATE and acting directly or through his, their or its agents, employees or sub-contractors.

f. **DAYS**

Days mean calendar days unless otherwise specified.

g. **GENERAL CONDITIONS**

General Conditions issued by the Department of the Attorney General of the State of Hawaii, referred to as Form AG-008, as revised, and included in solicitations by reference. The applicable revised Form AG-008, which is included by reference, is the form dated and in effect at the date the solicitation is issued.

h. **GENERAL PROVISIONS**

General Provisions are standard terms and conditions.

i. **HAR**

Hawaii Administrative Rules

j. **HEAD OF THE PURCHASING AGENCY**

The head of any agency with delegated procurement authority by law or from a chief procurement officer of this STATE to enter into and, administer contracts.

- k. HRS
Hawaii Revised Statutes
- l. IFB
Invitation for Bids
- m. OFFER
An offer means a bid or proposal as defined in sections 1a and 1p, in response to any solicitation.
- n. OFFEROR
Any individual, partnership, firm, corporation, joint venture or other legal entity, submitting directly or through a duly authorized representative or agent, an offer for the work or services contemplated in response to a solicitation as defined in 1s.
- o. PROCUREMENT OFFICER
Procurement officer means the person with procurement delegation duly authorized to enter into and administer contracts and make written determinations with respect to the contract. The term includes an authorized representative acting within the limits of authority. The delegated authority is received from the chief procurement officer directly or through the head of a purchasing agency or designee to the procurement officer.
- p. PROPOSAL
A proposal means any offer submitted in response to any solicitation, except a bid as defined in section 1a.
- q. PURCHASING AGENCY
Purchasing agency means any governmental body which is authorized by law or rules, or by way of delegation to enter into contracts for procurement of goods, services, or construction.
- r. RFQ
Request for Quotes
- s. RFP
Request for Proposals
- t. SOLICITATION
Solicitation means an invitation for bids ("IFB"), used in the competitive sealed bidding process, a request for quotes ("RFQ") used in the small purchases process, or a request for proposals ("RFP"), used in the competitive sealed proposal process for the purpose of obtaining quotes, bids or proposals to perform a STATE contract.
- u. SPECIAL PROVISIONS
The terms and conditions pertaining to the specific solicitation in which they are contained and in addition to these General Provisions; including but not limited to terms and conditions describing the preparation of solicitations, evaluation of offers, determination of award, plus those applicable to performance by the CONTRACTOR.

Additions or revisions to the General Provisions, which shall be considered a part of the General Provisions, setting forth conditions or requirements applicable to the particular project or contract under consideration shall be included in the Special Provisions. Should any Special Provisions conflict with these General Provisions, said Special Provisions shall govern.

v. **SPECIFICATIONS**

A description of what the purchasing agency requires and, consequently, what an offeror must offer to be considered for award.

w. **STATE**

A description "State" means the Judiciary, the Legislature, Office of Hawaiian Affairs, Department of Education, University of Hawaii, Hawaii Health Systems Corporation, remaining Departments of the Executive Branch and all governmental bodies administratively attached to them, and the counties.

x. **SURETY**

The individual, firm, partnership or corporation other than the CONTRACTOR, which executes a bond with and for the CONTRACTOR to ensure the CONTRACTOR's acceptable performance of the contract.

y. **WORK**

The furnishing by the CONTRACTOR of all labor, services, materials, equipment, and other incidentals necessary for the satisfactory performance of the contract.

2. COMPETENCY OF OFFEROR

Prospective offeror must be capable of performing the work for which offers are being called. Either before or after the deadline for an offer, the purchasing agency may require offeror to submit answers to questions regarding facilities, equipment, experience, personnel, financial status or any other factors relating to the ability of the offeror to furnish satisfactorily the goods or services being solicited by the STATE. Any such inquiries shall be made and replied to in writing; replies shall be submitted over the signatures of the person who signs the offer. Any offeror who refuses to answer such inquiries will be considered non-responsive.

The purchasing agency reserves the right to visit an offeror's place of business to inspect its facilities and equipment and to observe its methods of operation in order to facilitate evaluation of performance capabilities.

3. OFFER INCORPORATES SOLICITATION

The solicitation, including the AG's General Conditions, Specifications, General Provisions and any Special Provisions, and other documents referenced in or attached to the solicitation shall be considered a part of the offer whether attached to the solicitation or not at the time of its submission. Such documents shall not be altered in any way when the proposal is submitted and any alterations so made by the offeror may be cause for rejection of the offer.

4. PREPARATION OF OFFER

An offeror may submit only one offer in response to a solicitation. If an offeror submits more than one offer in response to a solicitation, then all such offers shall be rejected. Similarly, an offeror may submit only one offer for each line item (if any) of a solicitation. If an offeror submits more than one offer per line item, then all offers for that line item shall be rejected.

Competing subsidiary or jointly-owned companies may submit bids or proposals and these may be accepted for evaluation and award if such companies submit with their bids or proposals a certificate of non-collusion, sworn to before a notary, which acknowledges that the offer is without collusion.

Unless otherwise specified in the solicitation, all prices shall include applicable Federal, state and local taxes. Any illegible or otherwise unrecognizable price offer shall cause automatic rejection of the offer.

Offers submitted in response to an IFB or RFP shall be signed in ink in the space provided on the bid or proposal page by (1) the owner of a sole proprietorship, (2) one or more members of a partnership, (3) one or more members or officers of each firm representing a joint venture, (4) one or more officers of a corporation, or (5) an agent of the offeror duly authorized to submit offers on the offeror's behalf.

5. LATE OFFERS, LATE WITHDRAWALS, AND LATE MODIFICATIONS

Any notice of withdrawal, notice of modification of an offer with the actual modification, or any offer received at the place designated for receipt and opening of an offer after the time and date set for receipt and opening of offers is late. A late offer, late modification, or late withdrawal shall not be considered late if received before contract award and would have been timely but for the action or inaction of personnel within the procurement activity. A late offer or late modification that will not be considered for award shall be returned to the bidder unopened as soon as practicable and accompanied by a letter from the procurement activity stating the reason for its return. A late withdrawal request shall be responded to with a statement of the reason for non-acceptance of the withdrawal.

6. DISQUALIFICATION OF OFFERORS

An offeror shall be disqualified and his offer automatically rejected for any one of the following reasons: proof of collusion, in which case, all offers involved in the collusive action will be rejected and any participant to such collusion will be barred from future solicitations until reinstated; or offeror's delivery of the offer after the deadline specified in the public notice calling for offers, or as amended, except as allowed in Section 3-122-29 (1), HAR.

An offeror shall be disqualified and his offer rejected for any one or more of the following reasons: offeror's lack of responsibility and cooperation as shown by past work or services; offeror's being in arrears on existing contracts with the STATE or having defaulted on previous contracts; offeror's lack of proper equipment and/or sufficient experience to perform the work contemplated; offeror does not possess proper license to cover the type of work contemplated, if required; or offeror's failure to pay, or satisfactorily

settle, all bills overdue for labor and material on former STATE contracts at the time of issuance of solicitation.

7. IRREGULAR OFFERS

Offers will be considered irregular and shall be rejected for the following reasons including but not limited to the following: if the offer is unsigned by the offeror, unless otherwise specified in the solicitation; if the required offer guaranty received separately from the offer is not identifiable as guaranty for a specific offer, or is received after the date and time set for the opening; if the required offer guaranty is not in accordance with the solicitation; if the offeror or surety fails to sign the surety bond submitted as offer guaranty; if offeror fails to use the surety bond form furnished by the STATE or identical wording contained in the said form when submitting a surety bond as proposal guaranty; if the offer shows any non-compliance with applicable law or contains any unauthorized additions or deletions, conditioned, incomplete, or irregular or is in anyway making the proposal incomplete, indefinite, or ambiguous as to its meaning; or unbalanced offers in which the price for any item is obviously out of proportion to the prices for other items.

8. STANDARDS OF CONDUCT

All offerors should be certain that their offer is not in violation of HRS §84-15. This section provides as follows:

- a. A state agency shall not enter into any contract to procure or dispose of goods or services, or for construction, with a legislator, an employee, or a business in which a legislator or an employee has a controlling interest, involving services or property of a value in excess of \$10,000 unless:
 - (1) The contract is awarded by competitive sealed bidding pursuant to section 103D-302;
 - (2) The contract is awarded by competitive sealed proposal pursuant to section 103D-303; or
 - (3) The agency posts a notice of its intent to award the contract and files a copy of the notice with the state ethics commission at least ten days before the contract is awarded.
- b. A state agency shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in state office or employment in the matter with which the contract is directly concerned.

9. CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

If awarded a contract in response to a solicitation, offeror agrees to comply with HRS §11-355, which states that campaign contributions are prohibited from a State and county government contractor during the term of the contract, if the contractor is paid with funds appropriated by the legislative body, between the execution of the contract through the completion of the contract.

10. ACCEPTANCE OF OFFER

- a. Acceptance of offer, if any, will be made within 180 calendar days after the opening of offers, and the prices quoted by the offeror shall remain firm for the 180-day period. Unless otherwise provided, each individual item or group of items will be awarded to the responsive and responsible offeror whose offer complies with all the solicitation requirements. In determining the responsive and responsible offeror, offers will be evaluated not only on the amounts thereof, but on all factors relating to the satisfactory performance of the contract. Products or servicing capabilities must be of a quality and nature that will meet the needs and purposes of the intended use and must conform to all requirements prescribed in the specifications. The offeror must have the ability to perform as called for in the contract terms. The STATE shall be the sole judge of product or vendor capability. The successful vendor will be notified by letter that the offer has been accepted and that the vendor is being awarded the contract.
- b. If the offer is rejected or if the vendor to whom the contract was awarded fails to enter into the contract and furnish satisfactory security, if applicable, the purchasing agency may, at their discretion, award the contract to the next lowest or remaining responsible offeror or may publish another call for offers; provided in the case of only one remaining responsible offeror, the head of a purchasing agency may negotiate with such bidder to reduce the scope of work, if available funds are exceeded, and to award the contract at a price which reflects the reduction in the scope of work.
- c. The head of a purchasing agency further reserves the right to cancel the contract award at any time prior to execution of said contract by all parties, without any liability to the awardee and to any other offeror.

11. EXECUTION OF CONTRACT

The following subsections shall not apply to any contract in which the total amount payable to the CONTRACTOR cannot be accurately estimated at the time the contract is to be awarded:

- a. In cases where the contract award equals or exceeds the dollar level specified in Section 103D-305, HRS, the STATE shall forward a formal contract to the successful offeror for execution. The contract shall be signed by the successful vendor and returned, together with a satisfactory contract bond if required, and other supporting documents, within ten days after receipt by the vendor or within such further time as the procurement officer may allow.
- b. No such contract shall be considered binding upon the STATE until the contract has been fully and properly executed by all the parties thereto and the State Comptroller has, in accordance with Section 103D-309, HRS, endorsed thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract; with the exception of a multi-term contract, whereby, the State Comptroller shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts, that is sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal year of each term of the multi-year contract.

- c. Pursuant to the Attorney General's General Conditions (AG-008, as revised), Section 18, in any contract involving not only STATE but supplemental funds from the Federal government, this section shall be applicable only to that portion of the contract price as is payable out of STATE. As to the portion of the contract price as is expressed in the contract to be payable out of Federal funds, the contract shall be construed to be an agreement to pay the portion to the CONTRACTOR, only out of Federal funds to be received from the Federal government. This subsection shall be liberally construed so as not to hinder or impede the STATE in contracting for any project involving financial aid from the Federal government.

12. CONTRACT BOND

- a. The requirement for contract performance and payment bonds, if any, shall be stated in the Special Provisions of the solicitation.
- b. When required by the Special Provisions, a performance bond and a payment bond shall be delivered by the CONTRACTOR to the STATE at the same time the executed contract is delivered. Each amount of the performance and payment bonds shall not exceed fifty per cent of the amount of the contract price; provided, for contracts where contract price cannot be determined at the time of award, the amounts of the bonds shall be as stated in the solicitation.
- c. The acceptable performance and payment bonds are the same as the acceptable bid or proposal security deposit specified in Section 7. If a surety bond is submitted for either the performance or payment bond, in addition to the form prescribed, a power of attorney for the surety's attorney-in-fact executing the bond shall be provided.

13. FAILURE TO EXECUTE CONTRACT

If the offeror to whom a contract is awarded fails or neglects to enter into the contract, and to furnish satisfactory security as required by Section 11 within ten days after such award or within such further time as the procurement officer may allow, the purchasing agency shall pay the amount of offeror's proposal guaranty, as required under Section 7, into the State Treasury as a realization of the STATE. The procurement officer may thereupon award the contract to the next lowest responsible offeror or may call for new offers, whichever method is deemed in the best interest of the STATE.

14. RETURN OF OFFER GUARANTIES

All offer guaranties submitted as required by subchapter 24, chapter 3-122, HAR, shall be retained until the successful offeror enters into contract and furnishes satisfactory security or if the contract is not awarded or entered into, until the procurement officer's determination is made to cancel the solicitation. At such time, all offer guaranties, except surety bonds, will be returned.

15. PAYMENT

Section 103-10, HRS, provides that the State shall have thirty (30) calendar days after receipt of invoice or satisfactory completion of contract to make payment. For this reason, the State will reject any bid submitted with a condition requiring payment within a shorter

period. Further, the State will reject any bid submitted with a condition requiring interest payments greater than that allowed by §103-10, HRS, as amended.

The State will not recognize any requirement established by the Contractor and communicated to the State after award of the contract, which requires payment within a shorter period or interest payment not in conformance with statute.

16. DELIVERY EXTENSIONS

In the case of contracts for the purchase of goods, the delivery date or the maximum number of days for delivery will be specified by the STATE in its solicitation requirements, and all goods must be delivered with the time specified. However, the CONTRACTOR will not be held responsible for delay due to fire, flood, riot, labor disturbances, war, shortage of transportation, act of God or other reason beyond his control, provided that he notifies the STATE of such delay and the reason therefore as soon as practicable after its occurrence and requests extension prior to the specified date of delivery. Requests for extension of time shall be accompanied by documents such as the CONTRACTOR's purchase order, manufacturer's acknowledgement, shipping manifest, and any other documents substantiating that the causes for delay were beyond the control of the CONTRACTOR. The STATE shall be the sole judge of whether such delay is truly beyond the control of the CONTRACTOR and whether extension will be granted. The STATE reserves the right to terminate the contract or to assess liquidated damages, if provided for in the contract, for delays not covered by specific authorized extension.

17. PERSONAL LIABILITY OF PUBLIC OFFICIALS

In carrying out any of the provisions of the contract or in exercising any power or authority granted to them by the contract, there shall be no liability upon officials of the STATE, it being understood that in such matters, they act solely as agents and representatives of the STATE.

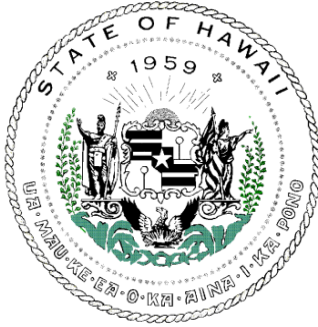


Exhibit 5: Attorney General (AG) General Conditions

RFP-ERP16001

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 Delayed 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.

- 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, or such other time as requested. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
- 27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.
- 28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
 - a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.
- 29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

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

31. Records Retention.

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

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

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

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

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

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

- (1) Social security number;
- (2) Driver's license number or Hawaii identification card number; or
- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:

- (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.
- d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:
 - (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
 - (2) Immediately terminate this Contract.

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

- e. Records Retention.
 - (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
 - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three 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.

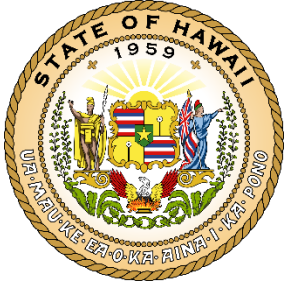


Exhibit 6: Selected Supplemental General Conditions

RFP-ERP16001

Notice

This Exhibit contains certain, but not all, of the provisions that will be included as part of the Contract between the State and the Contractor. References to **Sections** in this **Exhibit 6** are to **Sections** in this **Exhibit**. Certain definitions and provisions in this **Exhibit 6** are drafted to assist Offerors in preparing Offers and may change in the above-referenced Contract.

* * *

1. Supplemental General Conditions Definitions.

1.1 **"Acceptance"** means a notice from State to Contractor that a Deliverable or Service has conformed to its applicable Acceptance Criteria in accordance with the process described in Exhibit 6.

1.2 **"Acceptance Criteria"** means the RFP Requirements against which each Deliverable shall be evaluated in accordance with Exhibit 6 and the SLAs, warranties and other requirements described in this Contract, and any subsequent amendments and Change Orders, and State's satisfaction for Services which are not subsumed in a Deliverable.

1.3 **"Acceptance Tests"** means the tests or reviews that are performed by State to determine there are no Defects and Problems in the Services or Deliverables and that must be satisfied before Acceptance can occur as set forth in Section 7.3, including without limitation User Acceptance Tests on the System and testing the Operational Readiness of the System.

1.4 **"Affiliates"** means any person, including any individual, corporation, subsidiary, affiliate, partnership, association, business, organization or other entity that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a Party and/or such entities. The term "control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an individual or entity, whether through the ownership of fifty percent (50%) or more of voting shares (or their equivalent), by contract or otherwise.

1.5 **"Annex"** means any Appendix, Attachment, Exhibit, Schedule or other document appended to the Contract, the RFP and/or the Offer and which are made part of the Contract.

1.6 **"Audit"** has the meaning ascribed thereto in **Section 16.2**.

1.7 **"Availability"** means the time that the EPS, in whole and in part, is Operational, as measured 24 hours a day, Monday through Sunday, on a monthly basis. Availability shall be as described in **Appendix F**, except for mutually agreed upon scheduled Maintenance activities.

1.8 **"Business Continuity Plan"** has the meaning ascribed thereto in **Section 15.1**.

1.9 **"Business Day"** means any Day that is not a Saturday, Sunday or public holiday in the State.

1.10 **“Change”** means one or more modifications to the Services or Deliverables agreed upon and made pursuant to the change process in accordance with the terms hereof, including, with respect to, or as set forth in HRS, HAR, **“Appendix E-1, Implementation Services Requirements”** and **“Appendix E-2, Ongoing Services Requirements.”**

1.11 **“Change Order”** means a written amendment to the Contract, executed by the Parties’ authorized representatives, changing or adding to the Services and/or Deliverables.

1.12 **“Change Request”** means a request by the Contractor or the State to enter into discussions for a Change Order.

1.13 **“Confirmation”** means State’s receipt of notice and full supporting and written documentation (including without limitation test results) from Contractor that Contractor has, as applicable: completed or pre-tested through system testing a Deliverable in accordance with State’s Acceptance Criteria or pretested the EPS through system testing for compliance with the RFP Requirements; and confirmed the Deliverable, including but not limited to the EPS System, is ready for applicable Acceptance Tests.

1.14 **“Contractor”** means an EPS Contractor, as such terms are defined in the Primary RFP Document.

1.15 **“Contractor Assisting Entities”** means Contractor Subcontractors and Contractor Affiliates, and employees, contractors or agents of all their Contractor Subcontractors and Affiliates providing or supporting or assisting in providing or supporting the EPS and such persons and entities themselves, which or who assist Contractor in providing the EPS, in whole or in part.

1.16 **“Contractor Personnel”** means any and all personnel, employees, contractors or agents of Contractor or the Contractor Assisting Entities providing or supporting or assisting in providing or supporting the Services, including the operation of the EPS Services.

1.17 **“Contractor Subcontractor”** means a subcontractor approved by the State to provide or support the specific Services and Work Products approved by the State, together with independent contractors and agents (including, for avoidance of doubt, sub-subcontractors or independent contractors (or the equivalent under local Law) retained by a State-approved subcontractor and/or any one of the foregoing).

1.18 **“Contractor Technology”** means the Pre-Existing Works, software (including, but not limited to, the “Software”, as defined herein) and other Technology, that is owned, licensed and/or used by Contractor (including the Contractor Assisting Entities) in connection with the EPS. For purposes of clarity, Contractor Technology includes Upgrades and Enhancements thereto.

1.19 **“Contract Records”** has the meaning ascribed thereto in **Section 12.2.**

1.20 **“Corrective Action Plan”** means the detailed written plan required by State to correct or resolve a Defect and Problem or breach by Contractor or event causing the assessment of a liquidated damage against Contractor.

1.21 **“Costs”** means the amounts specified in accordance with the terms in the Contract, to be paid to Contractor for providing the Services and Deliverables, as set forth in the Contract.

1.22 **“COTS”** means commercial off-the-shelf equipment and software, including Third Party Software, supplied on behalf of, at the request of, at the direction of, as specified by Contractor, and/or as otherwise set forth in the Contract, to the State pursuant to the terms hereof, whether by direct purchase or license to the State or by a sublicense by Contractor, including, for clarity of reference, the EPS Software and, if utilized as part of the EPS, the SaaS Software, used in connection with the EPS.

1.23 **“Custom Software”** means new software or programming code which is specially designed, developed or produced by Contractor for the State as part of the EPS or which is subject to the provisions for the Unanticipated Tasks in the RFP Appendices, in binary and Source Code Form, but excluding Pre-Existing Works.

1.24 **“Day(s)”** means a calendar day or days.

1.25 **“Defect(s)”** means a failure of the Services or Deliverables, including the EPS, to meet the RFP Requirements (as such term is defined in the Primary RFP Document) or other applicable requirements hereunder. Also referred to as a Problem.

1.26 **“Deliverable”** means Contractor’s products which are produced and/or prepared for the State (either independently or in concert with DCHS or third parties) during the course of Contractor’s performance under this Contract, including all deliverables set forth in **“Appendix E-1, Implementation Services Requirements”** and **“Appendix E-2, Ongoing Services Requirements”** or in accordance herewith, including each Phase and the EPS, Enhancements, work produced under the Work Plan and Change Orders including but not limited to Custom Software, and Reports, as well as all designs, structures, and models developed in the course of rendering the Services and incorporated into such Deliverables.

1.27 **“Deliverable Warranty Period”** has the meaning ascribed thereto in **Section 7.5**.

1.28 **“Derivative Works”** has the meaning set forth in Section 101 of the Copyright Act, Title 17 of the United States Code.

1.29 **“Disaster Recovery Plan”** has the meaning ascribed thereto in **Section 15.1**.

1.30 **“Documentation”** means documentation and materials that describe in reasonable detail the specifications, functions, use, maintenance and operation of the EPS and the components thereof, including operations and training manuals for installation, maintenance, operation, and use of the EPS, including the Software.

1.31 **“DR”** means disaster recovery.

1.32 **“Enhancements”** means and includes all customizations, enhancements and additions made to the Software, and/or data fields, coding schemes, report formats, user or application interfaces, data displays, computer dashboards and other similar features.

1.33 **“EPS”** has the meaning ascribed thereto in Table 1 of the Primary RFP Document and the EPS System and the related implementation methodology together with the EPS Services and all other Services required to provide the foregoing.

1.34 **“EPS Program”** has the meaning ascribed thereto in Table 1 of the Primary RFP Document.

1.35 **“EPS Service IT Environment”** means the Technology, Software and network infrastructure used by, designed by, implemented by and/or provided by Contractor to provide the EPS Services.

1.36 **“EPS Service Modifications”** means the modifications to and Updates and Projects with respect to the EPS Services.

1.37 **“EPS Services”** means the Services set forth in **“Appendix E-1 Implementation Services Requirements”** and **“Appendix E-2, Ongoing Services Requirements”** including as defined in Table 1 of the Primary RFP Document.

1.38 **“EPS Software”** means the enterprise planning Software used to provide the EPS.

1.39 **“EPS System”** has the meaning ascribed thereto in Table 1 in the Primary RFP Document and the Technology, Equipment and Software, including modifications, configured so as to provide the EPS.

1.40 **“Escrow Agent”** means the independent third party that has been appointed pursuant to the Escrow Agreement to hold a copy of the Source Materials in accordance with the terms and conditions of the Escrow Agreement.

1.41 **“Escrow Agreement”** means the agreement between and among State, Contractor and the Escrow Agent, the form of which is attached hereto as **Schedule 3** to this **Exhibit**.

1.42 **“ETS”** means the State Office of Enterprise Technology Services.

1.43 **“Facilities”** means the facilities used by the Contractor to house Purchased Equipment, Software, and State Information comprising the EPS and/or provide related activities hereunder.

1.44 **“Force Majeure Event”** has the meaning ascribed thereto in **Section 15.2**.

1.45 **“Go-Live”** means the event(s) that occurs after Acceptance of a Phase when State decides to put the Phase, in whole or in part, into actual, productive use and to perform its regular business operations.

1.46 **“Good Faith Dispute”** means that State has made an initial, reasonable determination in good faith that Contractor has failed to provide all or part of the Services or Deliverables in accordance with the terms hereof or that payment for invoiced Costs is not properly due in accordance with the terms hereof.

1.47 **“Governmental Approvals”** means all licenses, consents, permits, approvals and authorizations of any Governmental Authority, or any notice to any Governmental Authority, the granting of which is required by Law, for the consummation of the transactions and provision of the Services and Deliverables required under this Contract.

1.48 **“Governmental Authority”** means any federal, state, municipal, local, territorial, or other governmental department, regulatory authority, judicial or administrative body, whether domestic, international or foreign.

1.49 **“Government Records”** has the meaning ascribed thereto in **Section 12.1**.

1.50 **“HAR”** means Hawaii Administrative Rules.

1.51 **“HRS”** means Hawaii Revised Statutes.

1.52 **“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, and HITECH, as the same has been and/or may be amended from time to time, including, but not limited to, the security standards thereunder.

1.53 **“Hosting Services”** has the meaning ascribed thereto in Table 1 of the Primary RFP Document and other related Services.

1.54 **“Implementation Services”** means the Implementation Services that Contractor is required to provide pursuant to the terms hereof, including those defined in **“Appendix E-1, Implementation Services.”**

1.55 **“Incident”** means an issue, incident and/or failure to meet a Service requirement, and as further set forth in **“Appendix GF, Service Level Agreement Requirements.”**

1.56 **“Intellectual Property Rights”** means (a) all rights under all copyright Laws of the United States and all other countries for the full terms thereof (and all rights accruing by virtue of copyright treaties and conventions), including all renewals, extensions, reversions or restorations of copyrights now or hereafter provided by Law and all rights to make derivative works and to make applications for and obtain copyright registrations therefor and recordations thereof; (b) all rights to and under new and useful inventions, discoveries, designs, technology and art and all other patentable subject matter, including all improvements thereof and all know-how related thereto under the Laws in any jurisdiction, and all applications for and the right to make applications for Letters Patent in the United States and all other countries, all Letters Patent that issue therefrom and all reissues, extensions, renewals, divisional applications and continuations (including continuations-in-part) thereof, for the full term thereof; (c) all trade secrets under the Laws of any jurisdiction; (d) all know-how under the Laws of any jurisdiction; (e) all trademarks, service marks and trade names under the Laws of any jurisdiction; (f) all Internet domain names, domain registrations and the similar rights arising under Laws of or recognized in any jurisdiction; and (g) all other intellectual and industrial property and proprietary rights throughout the world not otherwise included in the foregoing, including all techniques, methodologies and concepts and trade dress.

1.57 **“Key Personnel”** means Contractor Personnel whose names and resumes were submitted in the Offer, and/or such other Contractor Personnel otherwise agreed upon by the Parties in writing.

1.58 **“Laws”** means HRS, HAR and all other statutes, regulations, legislative enactments, and declarations, decrees, directives, judgments, injunctions, regulatory decisions or orders, ordinances, rules or other binding restrictions of or by any Governmental Authority, including opinions, policies and directions from the Department of the Attorney General.

1.59 **“Letter of Credit”** means a letter of credit securing Contractor’s performance of its Contract obligations and other potential liabilities to State from the Effective Date during the term, as described in Exhibit 6.

1.60 **“Losses”** means and includes any liabilities, claims, damages, costs (including the reasonable costs incurred in the enforcement of any indemnification obligations), reasonable legal fees (including reasonable attorneys’ fees and disbursements and costs of investigation, litigation and settlement), penalties, sanctions, fees, or disallowances imposed by Law and expenses incurred by the applicable person or entity.

1.61 **“Malicious Code”** means one or more computer viruses, worms, trap doors, Trojan horses, Easter eggs, drop dead devices, spyware, adware, hoaxes, extraneous programming or harmful code (including code which has been identified as harmful for which a patch is available), unauthorized remote access or administration tool programming or similar unauthorized program that does or can disable, damage, corrupt, interfere with or delete any element of software, data, computer or electronic records or files, including, without limitation, that which allows or facilitates Contractor, a Contractor Assisting Entity or any Third Party to access (including keystroke monitoring, activity monitoring and any other remote monitoring or auditing functions) the State Systems and/or other information systems without State’s prior authorization or that may be reasonably expected to: (a) permit access to or use of State Information and databases (including, without limitation, PII) by any unauthorized person or entity; or (b) perform any other unauthorized action on or in connection with any aspect of the State Systems.

1.62 **“M&O”** means Maintenance and Operations.

1.63 **“NDA”** means the Confidentiality and Nondisclosure Agreement by and between the Parties, dated as of [date to be inserted], 2016.

1.64 **“Obsolete”** (and any variations thereof) means a software and/or Technology product will be deemed “Obsolete” as of the effective date of an end-of service life announcement from the manufacturer/licensor with respect to a product. If no such announcement is published, then the software and/or hardware product will be deemed Obsolete as of (i) the date the manufacturer/licensor no longer maintains or supports the product or (ii) the date the manufacturer/licensor no longer includes it as part of its product and/or service offerings made generally available to its customers.

1.65 **“Offer”** means the Contractor’s accepted proposal to provide the EPS as set forth in the Offeror Response Form and Offeror Response Form Attachments.

1.66 **“Ongoing Services”** means the Services defined in **“Appendix E-2, Ongoing Services Requirements.”**

1.67 **“Operational”** means the condition when the EPS is totally functional in accordance with RFP Requirements and usable for its purposes in the daily operations of providing the EPS.

1.68 **“Party”** means each of Contractor and State (and collectively, **“Parties”**).

1.69 **“Phase”** means the combination of functions described as a Phase in the RFP, Offer, applicable Deliverables, and the Work Plan, including but not limited to payroll and time and attendance functions.

1.70 **“PII”** means any information relating to an identified or identifiable natural person, including, without limitation, government officials, employees, agents, citizens and residents of, and visitors to, the State, and any other person or entity who provides such information to the State. Such information includes, without limitation, individuals’ names, geographic addresses, telephone numbers, email addresses, Social Security numbers, driver’s license numbers, credit or debit card numbers, and information concerning insurance, health, and other care and related information, insurance policy numbers (including, without limitation, medical and life insurance policy numbers), personal health information, medical records and financial information, stored in or accessed through (a) the State’s information technology systems; (b) the information technology systems or other storage systems or means of Contractor arising out of or in connection with the EPS in whole or in part; and/or (c) the information technology systems or other technology systems or means of a vendor or provider of goods or services to the State.

1.71 **“Pre-Existing Works”** means computer software, tools and other technology owned by Contractor, or licensed by a Third Party to Contractor or its Affiliates, and used by Contractor to provide or support the EPS as part of Contractor’s day-to-day operations and that are not developed specifically for State pursuant to the terms hereof, including Contractor’s proprietary methodologies, information, project management and other tools, deliverable examples, procedures, processes, techniques, data models, templates, general purpose consulting and software tools, utilities, and routines, and provided, that for the purposes of this definition, and without limiting any other provision hereof, the term Contractor includes all Contractor Assisting Entities.

1.72 **“Primary RFP Document”** means the RFP exclusive of the Exhibits and the Appendices.

1.73 **“Problem”** means a failure of the EPS to operate in accordance with the RFP Requirements hereunder, including as a result of an Incident. Also referred to as a Defect.

1.74 **“Project”** means the Services and Deliverables required for the implementation of a subset of the RFP Requirements as specified in the Appendices.

1.75 **“Purchased Equipment”** means all infrastructure, computer and telecommunications hardware, peripherals and related equipment, furniture, and other

equipment (other than Software) that the State is required to purchase, license or use in accordance with the provisions of the Offer.

1.76 **“Release Conditions”** means the release conditions for the release of some or all of the Source Materials from escrow, as set forth in the Escrow Agreement.

1.77 **“RFP”** means the Request For Proposals issued by the State on February 16, 2016, as the RFP is defined in the Primary RFP Document therein, as it may be amended.

1.78 **“Services”** means the EPS Services, the EPS, the M&O services, and Hosting Services, if any, the Unanticipated Tasks, other services provided or required to be provided by Contractor hereunder (including by or with the assistance of a Contractor Assisting Entity), and all other services, including but not limited to services that produce Work Product and Deliverables, including with respect to the implementation and maintenance, if applicable, of an EPS System to provide the EPS, provided or required of Contractor (including by or with the assistance of a Contractor Assisting Entity) under the Contract, or otherwise specified by Contractor in the Contract or by mutual written agreement of the Parties, including through a combination of the EPS Service, the EPS System and/or any other service.

1.79 **“Service Level Agreements”** and **“SLAs”** mean one or more of the service levels, performance standards, requirements and other criteria set forth in or referred to herein or in accordance herewith, and such other performance standards as the Parties may agree upon in writing from time to time hereunder, including, as described in **“Appendix F, Service Level Agreement Requirements.”**

1.80 **“Software”** means the COTS software, Contractor Technology software, Third Party Software, Custom Software, the EPS Service Software, other software used in the EPS Service IT Environment, and all other software used by Contractor in providing the Services and Deliverables, excluding State Third Party Software.

1.81 **“Software License”** means a worldwide, non-exclusive, royalty-free, fully-paid-up, perpetual (or the longest period permitted by Law), irrevocable license and right (with the right to sublicense, except as may otherwise be agreed or limited by the Parties) under all of the licensor’s Intellectual Property Rights (and in the case of software to be licensed or sublicensed by or on behalf of a Contractor Assisting Entity under all of the Contractor Assisting Entity’s Intellectual Property Rights) to use, including Use, Software, other Contractor Technology, and other Pre-Existing Works subject to this Contract.

1.82 **“Source Code”** means and includes human-readable computer programming code, associated procedural code, listings, flow charts, logic diagrams, software tools, executables, libraries, scripts and related and supporting Documentation corresponding to the Software, including all subsequent versions (including assembly, linkage and other utilities), suitable and sufficient to enable a person possessing reasonable skill and expertise in computer software and information technology (i) to build, load, and operate a machine-executable object code version of the Software that is equivalent to the latest version of the Software furnished by the licensor, and (ii) to maintain, support, modify, improve and enhance the Software.

1.83 **“Source Code Form”** means the software in fully commented Source Code form together with all design, functional, procedural, technical and other specifications and

documentation therefor, test scripts, test data, diagnostic tools, root-cause analysis reports for software operational difficulties, and any libraries, file structures and other information and materials necessary for a reasonably skilled programmer to perform a successful compilation into executable form.

1.84 **“Source Materials”** means the then-current version of the Source Code for the Software to the extent available as Source Code, the object code for the Software to the extent the Source Code is not available, programmer notes, its database schema and architecture, the functional specifications of the Software, or the then-current license keys, if any, for the Software and any components thereof, and to the extent maintained by Contractor, object libraries, design documentation, statements of principles of operations, schematics, any Contractor’s or administrator’s guides, test data, test protocols, and, if any of the components of the Software are encrypted, the relevant decryption tools and keys for the Software and/or Source Code, together with the names and the then-current addresses, home telephone numbers and personal email addresses of the programmers who wrote the material aspects of the Software and its related documentation and other materials described in **Schedule 3** to this **Exhibit**.

1.85 **“SOW”** means a Statement of Work.

1.86 **“SPO”** means the State Procurement Office.

1.87 **“State”** means the State of Hawaii, United States of America (and includes the departments within the Executive Branch and all governmental bodies administratively attached to it, including the Department of Education and the University of Hawaii, and related jurisdictions, i.e., the Judiciary, the Legislature, the Hawaii Health Systems Corporation, and the Office of Hawaiian Affairs).

1.88 **“State Data”** means State PII and all data and information (including, without limitation, data relating to the Services, Deliverables, and/or this Contract): (a) submitted to Contractor, by or on behalf of State; (b) obtained, maintained, developed or produced by or on behalf of Contractor specifically for State in connection with the Services, Deliverables, and/or the Contract, including (i) State business data in any reports prepared by or on behalf of Contractor or provided to Contractor with respect to State, including any drafts thereof, and (ii) State data and information in any databases created or used by or on behalf of Contractor; and/or (c) to which Contractor has access in connection with the provision of the Services and Deliverables, including, but not limited to, in (a), (b) and (c) above, information relating to State’s customers, suppliers, employees, contractors, agents, sales personnel, technology, operations, facilities, financials, consumer markets, products, capacities, systems, procedures, security practices, research, development, business affairs and finances, and any data collected, generated or derived from all or part of the foregoing, and provided, that for the purposes of this definition, and without limiting any other provision hereof, the term Contractor includes all Contractor Subcontractors.

1.89 **“State Information”** means State Data, software, programming code, confidential information and other property owned by or licensed to the State or any of its departments or other governmental entities.

1.90 **“State IT Environment”** means the IT environment used by State (excluding EPS Service IT Environment) in connection with the Services, EPS and other Deliverables, and includes the portion of the State System which accepts data, including State Data, from the EPS.

1.91 **“State IT Environment Incompatible”** means technically incompatible with the State IT Environment and the interoperating portions of the State IT Environment.

1.92 **“State Property”** has the meaning ascribed thereto in **Section 4.1**.

1.93 **“State System”** means the computers, computer systems, computer networks and related equipment (including, without limitation, software installed thereon or operating in conjunction therewith and all portable and mobile devices, such as smartphones and tablets) of State whether or not used with respect to the Services and Deliverables, and including those of, or used by, State, including, without limitation, the State telecommunications systems and computer networks owned or operated by or for State, and all databases and records stored thereon (including, without limitation, PII).

1.94 **“State Third Party Software”** means software which is licensed by the State other than through or at the request or direction of Contractor, which is used in connection with the EPS, and which is not Third Party Software.

1.95 **“Subject Materials”** has the meaning ascribed thereto in **Section 8.3**.

1.96 **“Technology”** means software and programming code (of any type), computers, hardware, equipment, and related systems and technology.

1.97 **“Term”** has the meaning ascribed thereto in Section 15.3 of the RFP.

1.98 **“Third Party”** means a person or entity other than State, Contractor or any Contractor Subcontractor or Contractor Affiliate.

1.99 **“Third Party Software”** means Software that is supplied by a Third Party to Contractor in connection with, or as a part of, the EPS and other Services and Deliverables, and that is owned by a Third Party. For clarity, Third Party Software includes Third Party COTS Software, and both of the foregoing (for all purposes hereof, except as otherwise specified herein) include Software provided by a Third Party (that is by other than Contractor).

1.100 **“Total Contract Amount”** has the meaning ascribed thereto in **Section 9.2**.

1.101 **“Unanticipated Tasks”** has the meaning ascribed thereto in the RFP Appendices.

1.102 **“Updates”** means error corrections, bug-fixes and software and modifications to Software, including those which cure a Defect or a Problem.

1.103 **“Upgrade”** and all variations of the term mean updates and upgrades to software, hardware and other Technology (including software embedded in hardware or other Technology), including versions of Software written in different, new or alternative programming languages or for operation on other platforms.

1.104 **“Use”** means use, make, sell, install, operate, develop, compile, run, reproduce, deploy, distribute, transmit, display, perform, create Derivative Works of, make available on servers, provide or receive access to, integrate with software, including Software, make interoperable and perform tasks as necessary to utilize any item, creation, object, program, idea, concept, data, information, knowledge or any other tangible or intangible property and otherwise exploit same in any manner whatsoever. “Use” shall include creating Derivative Works with respect to Contractor or Contractor Assisting Entity-owned Intellectual Property Rights and, if Contractor is otherwise permitted to grant such rights on behalf of a Third Party, with respect to such Third Party Intellectual Property Rights.

1.105 **“User Acceptance Tests” or “UAT”** means any type of Acceptance Test identified by State or agreed upon between the parties to determine the functionality and compliance of Services and Deliverables provided by Contractor for Acceptance by State.

1.106 **“Work Plan”** means the overall plan of activities for the delivery of Services and Deliverables, and the delineation of tasks, activities and events to be performed and Deliverables to be produced with regard thereto, as provided in accordance with this Contract.

1.107 **“Work Product”** has the meaning ascribed in **“Appendix E-1, Implementation Services Requirements”** and **“Appendix E-2, Ongoing Services Requirements”** and all (other than Deliverables): (i) work product, artifacts, data, information and writings (whether in electronic, written or other form) and materials created, generated, modified or made by or on behalf of Contractor or Contractor Personnel as part of or arising out of the Services; (ii) contributions made by or on behalf of Contractor or Contractor Personnel to the State requirements hereunder; and (iii) scripts, comments, production notes, product concepts, plans, proposals, outlines, design elements, forms, images, photos, screen shots, graphical user interfaces, sketches, drawings, text, works of authorship, works of art and documentation (including software documentation) and all edits and modifications to the foregoing items in subsections (i)-(iii) and Derivative Works thereof, and all elements contained therein, in any form whatsoever, and all revisions and other modifications created by Contractor (and/or Contractor Personnel), other works of authorship, technology, including, Technology, improvements, inventions, discoveries, know-how, work product, other deliverables and other material developed pursuant to this Contract, as any of the foregoing elements is created in whole or in part by or on behalf of Contractor or Contractor Personnel as part of the Services or as arising out of the Services, including any work in process.

2. Order of Precedence and Licenses.

2.1 Precedence. In the event of a conflict between or among any provisions of this **Exhibit 6** and **Exhibit 5**, the provision which provides the State with greater rights or greater protections, as determined by State in its sole determination in each case, shall control.

2.2 Contractor Technology, Third Party Software, and Pre-Existing Works License. Except for Third Party Software, including COTS Software, that is directly licensed to the State by a Third Party, Contractor hereby does grant State a Software License to the Contractor Technology, Third Party Software and Pre-Existing Works, including the Source Code Form thereof, and shall cause others to do the same to the extent required by the State, as necessary for State’s use, including Use, thereof. As between State and Contractor, the Contractor Technology that is not developed for State pursuant to the terms hereof, will be deemed

exclusively owned and/or licensed (under the Software License pursuant to the terms of this Section) by Contractor, including any improvements, Updates and/or Enhancements not developed for State pursuant to the terms hereof. For the avoidance of doubt, the foregoing Software License shall survive the termination or expiration of this Contract (or any part thereof) for any reason, and no consideration shall be required to be paid by State for the Software License after such termination or expiration. State has the right to assign and sublicense its Software License, or any part thereof as it deems necessary to use, including Use, the EPS, in whole or in part, and other Deliverables and Services. For further avoidance of doubt, the Software License granted in this Section includes all versions of, and improvements, Updates and Enhancements to, the Contractor Technology used in connection with, or as a part of, the EPS.

2.3 Third Party Software Licenses. Subject to any other approval rights of the State set forth herein, prior to utilizing any Third Party Software that may be included as part of a Software Deliverable to the State and that could be used directly by the State if the Third Party Software would be installed on the State System, Contractor shall provide to the State copies of any applicable license agreement from the licensor of the Third Party Software to allow the State to pre-approve such license agreement. Further, Contractor in the performance of its Services shall comply with all licenses, requirements, rules and policies of the Third Party Software. If State does not approve any such agreements, Contractor shall replace such Third Party Software with a functionally equivalent product and acceptable license agreement and/or maintenance agreement. Contractor shall assign to State applicable license agreements and maintenance agreements for the Third Party Software upon expiration or termination of the Contract at no additional charge.

2.4 Documentation. Unless otherwise provided in the RFP Appendices or another Annex hereto or thereto, and subject to the same, Contractor shall provide two (2) sets of Documentation to the State for use in electronic format compatible with Microsoft Corporation's then-generally available Office products and in written format in accordance with the terms of the Contract. Upgrades and revisions to this Documentation shall be provided by Contractor for as long as Contractor is providing Services under the Contract. There shall be no additional charge for the Documentation or updates thereto, in whatever form provided. Contractor's Documentation shall be comprehensive, well-structured, and indexed for easy reference. If Contractor maintains its technical, maintenance and installation Documentation on an intranet or the Internet or other web-based service, Contractor may fulfill the obligations set forth in this Section by providing the State access to its web-based Documentation information, which obligation shall survive the termination of this Contract for as long as Contractor generally provides such access to its other customers. Contractor may also provide such information on CD-ROM or DVD. Except for Third Party Software Documentation, including COTS Software Documentation, directly licensed to the State by a Third Party in accordance with the terms hereof, Contractor agrees to and hereby does grant State a worldwide, perpetual (or the longest period permitted by Law in the applicable jurisdiction), irrevocable, royalty-free, fully paid-up, license under all of Contractor's and Contractor's Assisting Entities' Intellectual Property Rights to use, including Use, the Documentation, and authorize others to do the same, as necessary for State's Use, including use, receipt and/or support of the Services. As between State and Contractor, the Documentation, other than with respect to Custom Software, or as otherwise assigned to State hereunder, will be deemed exclusively owned and/or licensed by Contractor, including any improvements, updates and/or enhancements thereto that do not constitute Enhancements that are not owned by the State. For the avoidance of doubt, the foregoing license

shall survive the termination of this Contract (or any part thereof) for any reason, and no consideration shall be required to be paid by State for the license after such termination. State has the right to assign and sublicense its license, or any part thereof as it deems necessary to use, including Use, the Documentation. For further avoidance of doubt, the license includes all versions of, and improvements to, the Documentation used in connection with, or as a part of, the Services.

2.5 Replacements. The State is, and shall be, entitled to exercise all its rights hereunder with respect to Contractor Technology and Pre-Existing Works with respect to any replacement equipment or Software provided by, or on behalf of, Contractor, or approved or required by Contractor for use with the EPS hereunder without payment of additional Costs or other amounts.

2.6 Versions. Unless otherwise mutually agreed to in writing including in an Appendix to the RFP, Contractor shall, during the term of the Contract, maintain any and all Third Party Software products provided as part of the Deliverables, the Services or EPS at their most current version or no more than one version back from the most current version, in the determination of the State, unless otherwise mutually agreed by the Parties, at no additional Cost for such Software or Services. However, Contractor shall not maintain any Third Party Software versions, including one version back, if any such version would prevent the State from using any functions or functionality, in whole or in part, in accordance with applicable RFP Requirements for the State's then-current version of the Deliverables or would cause Problems or Defects in the Deliverables, Services, or EPS. While performing Services hereunder, Contractor shall not be required to provide M&O Services or be subject to SLAs or damages for Third Party Software that is Obsolete; however, in such event, such obsolescence must be resolved promptly, subject to **Section 7.6**. Any additional Costs that are charged by a Third Party Software manufacturer for an Upgrade to a Third Party Software product that is not covered by such product's maintenance agreement shall be charged to and paid for by Contractor.

2.7 License Under Bankruptcy Code. All rights and licenses granted under or pursuant to this Contract by, or on behalf of, Contractor to State are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code, or replacement provision therefor (as used in this **Section 2.8**, the "**Code**"), licenses to rights to "intellectual property" as defined in the Code. The Parties agree that State, as the licensee of such rights under the Contract, shall retain and may fully exercise all of its rights and elections under the Code. The Parties further agree that, in the event of the commencement of bankruptcy proceedings by or against Contractor, a Contractor Assisting Entity, or the licensor thereof, under the Code, State shall be entitled to retain all of its rights under this Contract.

2.8 Licenses to Contractor. Subject to the terms hereof, the State hereby grants to Contractor, a non-transferrable (other than sublicenses to permitted Contractor Assisting Entities), non-exclusive, royalty-free, paid-up right and license within the United States during the term of the Contract, to Use the State Information, solely as necessary to perform Contractor's obligations pursuant to the Contract. For purposes of clarification, neither Contractor nor Contractor Assisting Entities shall provide any third party with access to or Use of the State Information without the prior written consent of the State, and only to the extent of such consent.

3. Custom Software.

3.1 Contractor shall develop Custom Software Deliverables as described in the RFP and Offer. In addition, from time to time, the State may commission the development of Custom Software to be written by Contractor or, with the State's prior approval, by Contractor Subcontractor(s), pursuant to the applicable provisions governing Unanticipated Tasks in the Appendices and Changes in the Exhibits to the Contract. Each Custom Software Deliverable shall be subject to testing and acceptance procedures agreed upon by the Parties and as described below.

3.2 State shall own Custom Software from the moment of creation, unless the Parties otherwise agree in writing in an amendment to the contract, all worldwide right, title and interest, including all Intellectual Property Rights in and related thereto, in: (i) the Custom Software in Source Code Form, the object code and the Custom Software specifications and RFP Requirements (but excluding Contractor's Pre-Existing Works); and (ii) all Work Product and Deliverables, including those relating to the Custom Software. The Custom Software shall be State Property and shall be assigned to State in accordance with **Section 4.2**.

3.3 The State agrees to and hereby grants Contractor a Software License during the term to Use all or part of such Custom Software in development of other Custom Software to be owned by the State or as part of, or to support, the EPS.

4. Ownership Rights.

4.1 State Ownership. State shall own all worldwide right, title and interest, including all Intellectual Property Rights in and related thereto, in: (a) the Custom Software (unless otherwise agreed to in writing by the Parties in an amendment to the contract) (including, for the avoidance of doubt, the Source Code thereof) and Documentation therefor, the Custom Software specifications and RFP Requirements to the extent not included in the foregoing, and all EPS Service Modifications, Updates and Enhancements (including with respect to all of the foregoing, the Source Code thereof) thereto and the Documentation therefor; (b) all Work Product and Deliverables, and, in the event that Software is the subject thereof, the Source Code thereof and the Documentation and the specifications and RFP Requirements (however designated) therefor; and (c) all other Work Product and Deliverables created hereunder, whether or not, with respect to each of subsections (a), (b) and (c), created by Contractor and/or any Contractor Assisting Entity or by Contractor and/or a Contractor Assisting Entity in combination with another person or entity (including State) (collectively, "**State Property**").

4.2 Assignment. To the extent that ownership of any part of the State Property (including any of the Intellectual Property Rights in and thereto) does not vest in State by operation of Law in any jurisdiction, Contractor hereby assigns, grants and conveys (and shall cause any Contractor Assisting Entity to assign, grant and convey) all of Contractor's and/or any Contractor Assisting Entity's and their employees', contractors', subcontractors' and other agents' worldwide right, title and interest in the same to State without the necessity for any additional consideration. Each foregoing assignment, grant and conveyance to State shall be referred to as a "**State Assignment**," and Contractor acknowledges and agrees that such State Assignment shall be effective as of the moment of creation or development of any Work Product and/or Deliverables, or portion thereof, or the Intellectual Property Right, which is the subject thereof.

Contractor hereby, without reservation, binds Contractor and the Contractor Assisting Entities and its and their employees, contractors, subcontractors, agents, successors, assigns and legal representatives to cooperate fully and promptly with State and to do all acts necessary or required to be done or requested by State to perfect the assignment to State, including, in and in connection with all proceedings before the U.S. Copyright Office, the U.S. Patent and Trademark Office and similar intellectual property governmental offices or agencies in other jurisdictions, without the necessity of further consideration from State, but at State's reasonable expense, subject to availability of funds. Contractor shall also, from time to time, execute and deliver (and/or cause to be delivered) to State any and all lawful recordation and application documents, including petitions, specifications, oaths, assignments, disclaimers, waivers and lawful affidavits in form and substance as may be requested by State. Contractor shall further provide State from time to time with all other assistance required to vest or perfect State's exclusive ownership of the State Property, and cooperate with State and do all acts requested by State to evidence, establish, apply for, procure, register, record, maintain, enforce and defend State's rights in the same on a prompt basis, but in any event within such time period(s) as required to enable State to timely preserve or assert its rights in any country or region of the world. Contractor hereby appoints State as its agent and attorney-in-fact to act for and on Contractor's behalf in connection with the foregoing, which appointment is irrevocable and coupled with an interest. Contractor also agrees not to file any applications in any jurisdiction for any Intellectual Property Rights in or with respect to the State Property and/or any components thereof, or to contest or challenge or assist others in contesting or challenging State's ownership of or State's Intellectual Property Rights in the State Property. Contractor hereby expressly waives any "moral rights" or rights of "*droit moral*," if any, that Contractor may have in the subject matter of the assignment. Without limiting the foregoing provisions of this **Section 4.2**, Contractor agrees to comply with all requests from State related to securing, protecting, enforcing and defending State's rights in the State Property, State confidential information, State Information and any Intellectual Property Rights owned by State, including executing additional documents and/or instruments as requested by State or its attorneys or agents. Without limiting the other provisions of the Contract, Contractor shall not, and shall not permit any other third party to, without the specific prior written approval of State in each instance, (a) create any Derivative Works of or (b) decompile, disassemble or reverse engineer any State Property or any State confidential information, State Information or any other property or Intellectual Property Rights of State. Subject to the terms hereof, the State shall also own and retain all right, title and interest in and to its confidential information, the State Information, the State's Intellectual Property Rights, the Purchased Equipment and Technology, licenses to the State Third Party Software, and any other State property developed independently by the State or a Third Party other than Pre-Existing Works.

4.3 Contractor Ownership. Subject to the terms hereof, as between the State and Contractor, Contractor and its licensors, as applicable, retain all right, title and interest in and to the Contractor and Contractor Subcontractor confidential information, Contractor Technology and the Pre-Existing Works.

4.4 Title. Subject to the terms hereof, as between Contractor and the State, Contractor and its Contractor Assisting Entities hold all right, title and interest in any Contractor owned equipment, Contractor Pre-existing Works and other Contractor Technology, as well as Derivative Works thereof.

4.5 Data. Contractor shall provide the State with a complete copy of any and all State Data controlled or held by or for Contractor on the sixth (6th) Business Day of each January beginning on the first January after the execution of the Contract and additionally within five (5) Business Days at any time of a request from the State. Contractor shall provide such State Data, at no additional Cost to the State, on magnetic, optical, or other media in a format acceptable to the State, or by electronic transfer and in the form and manner requested by the State from time to time.

4.6 Restrictions on Use. Except as expressly permitted hereunder, Contractor shall not provide or in any manner disseminate any Work Product or Deliverables to any Third Party, other than permitted Contractor Assisting Entities, or represent in any way Contractor ownership in any Work Product or Deliverables, without the prior written permission of the State and subject to the license rights applicable to any State Software embodied therein. Contractor shall not, and shall cause its agents, employees and Contractor Assisting Entities not to, copy or disclose, transmit, provide, make available or permit access to, any Work Product or Deliverables or any portion thereof, in any form, to any third party except as expressly permitted in the Contract.

4.7 COTS Software. All Software developed under, or pursuant to, the Contract shall be the property of the State, except to the extent it is Pre-Existing Work. All EPS data, including data created by Contractor and Contractor Assisting Entities, shall be the property of the State.

5. Contractor Personnel.

5.1 General Requirements. Contractor shall provide the EPS using Contractor Personnel in accordance with the provisions hereof, and including, for convenience of reference, **“Appendix M, Proposed Project Organization and Staffing”** and the provisions of **Exhibit 5, State Attorney General (AG) General Conditions**.

5.2 Background Checks. As set forth in the RFP Appendices and/or requested by the State, and subject to the foregoing, before any Contractor Personnel begin performing any service, including Services, on behalf of State, Contractor shall conduct a background check for such Contractor Personnel (a) covering each such individual’s criminal and arrest record, employment history and education background, and (b) Contractor shall conduct (or caused to be conducted) a drug screening of each such Contractor Personnel. Contractor shall not permit any Contractor Personnel who does not pass the background check and drug screening in accordance with standards specified by State from time to time or required by Law to perform any part of the Services or have access to any State facility or information. State reserves the right to Audit the records of such background checks from time to time. To the extent that State determines that a background check is inadequate for any Contractor Personnel, (x) Contractor shall perform a new or supplemental background check in accordance with the requirements of State, and (y) to the extent that State directs, Contractor shall not permit such Contractor Personnel to perform or support the Services until such time as State may so permit. Further, for all Contractor Personnel who will have access to State Information, the background check shall include a seven-year criminal investigation at the local and federal levels, Social Security Number verification, National Criminal Record Locator search, and Global Watch Alert (a check of numerous government watch lists that include individuals, organizations, and companies that have been placed on watch status by the United States Government, European Union, United Nations Security Council, World Bank or foreign governments) in each applicable country.

5.3 Other Policies. Contractor shall, and shall cause its Contractor Personnel, contractors (including Contractor Assisting Entities) and agents to, abide by all State policies and procedures that may be established from time to time, and which are provided to Contractor, including, without limitation, rules and requirements for document and data retention, the protection of premises, materials, equipment and personnel and information assets. In addition to, but not by way of limitation of, any remedies available to State hereunder or pursuant to applicable Law, any violations or disregard of these rules shall be cause for denial of access by such personnel to facilities of State and/or immediate termination of this Contract.

5.4 Exclusion of Specific Workers. The State reserves the right to require the Contractor to remove any Contractor Personnel, agent, or volunteer from performing work under the Contract. The State Program Manager shall notify the Contractor in writing and the exclusion of a designated individual shall take effect as indicated on the notice. The Contractor may appeal the State's decision to the State Program Manager, in writing within ten (10) Business Days of receipt of the notice. Removal of the Contractor Personnel, agent or volunteer shall remain in effect pending the outcome of the appeal. The decision of the State Program Manager shall be final. This provision shall not infringe upon the right of the Contractor to employ the removed individual that does not require interaction with, or Services to, the State.

5.5 Changes in Contractor Key Personnel. Subject to the RFP Appendices, Contractor will not remove any of the Key Personnel other than by legally required leave of absence, death, discharge, discipline, or resignation of the affected individual without prior written approval of the State, provided, however, that, notwithstanding the foregoing, Contractor shall immediately, and without the necessity of prior advance notice to or written approval from the State, discharge or remove from the performance or support of Services any one of the Key Personnel who Contractor knows or suspects has disclosed or may be likely to disclose State Information without authorization. The successor employee proposed by Contractor for any Key Personnel position is subject to the State's prior written approval. Contractor shall provide the State with detailed information concerning the qualifications, experience, and expertise of the proposed successor together with any additional information requested by the State. The State shall have the right to interview the proposed successor. The State shall have right to require the removal of any Contractor and Contractor Assisting Entity personnel. Contractor shall provide not less than thirty (30) days' advance notice before removing any Key Personnel for any permitted reason hereunder, other than for legally required leave of absence, death, discharge, discipline or resignation of the affected individual. In the case of any Key Personnel removed for legally required leave of absence, death, discharge, discipline or resignation, Contractor shall expeditiously propose a successor. If the State requests, Contractor shall appoint a qualified employee (subject to prior approval of the State except where time is of the essence) to serve in an interim capacity pending the State's approval of the proposed successor. In the event of any conflict between this **Section 5.5** and an Appendix, this **Section 5.5** shall control.

5.6 Contractor Responsibility. Contractor, and not the State, shall bear any and all liability arising out of a claim (whether or not asserted in court or any other tribunal) asserted by any person or entity (including, for example, and without limitation, a Contractor Subcontractor or its employees or agents) arising out of, related to or in connection with his, her or its employment or retention or any asserted employment or retention (including, without limitation, claims involving disparate treatment, dismissal, failure to be hired or retained, discrimination and/or failure to receive employment or retirement benefits).

6. Services and Deliverables.

6.1 Annexes and Appendices. Contractor shall perform the Services and provide Deliverables as set forth herein subject to the terms and conditions set forth herein, including, for the avoidance of doubt any Annex or Appendix.

6.2 SLA Testing. Subject to the RFP Appendices, Contractor and State will conduct tests for measuring and certifying the achievement of the SLAs as described in “**Appendix F, Service Level Agreement Requirements.**” Contractor must implement all testing, measurement and monitoring tools and procedures required to measure and report Contractor’s performance of the Deliverables and Services against the applicable SLAs. Such testing, measurement and monitoring must permit reporting at a level of detail sufficient to verify compliance with the SLAs, and will be subject to Audit by the State. Contractor will provide the State with information and access to all information and Work Product and Deliverables produced by such tools and procedures upon request for purposes of verification.

6.3 Cooperation With Other State Providers. As part of the Services, Contractor shall cooperate with all other State contractors and all other Third Parties (including for purposes of this **Section 6.3** Contractor Assisting Entities providing services to the State other than as a Contractor Assisting Entity) providing products, services, support and/or assistance to the State which are used in connection with, or interact with, the Services and EPS and provide timely assistance, as required by State, and other State contractors and such Third Parties in order for Contractor, and other State contractors and such parties to provide services to and discharge their obligations to State and such other State contractors and Third Parties on an integrated basis.

7. Representations, Warranties and Covenants.

7.1 Representations, Warranties and Certain Covenants of Contractor. Contractor represents, warrants and covenants to State, as an essential part of the Contract, that:

- (a) it is duly organized and validly existing and in good standing under the Laws of the jurisdiction of its incorporation or formation;
- (b) it has full corporate power and authority to execute and deliver the Contract and perform its obligations hereunder and to grant the rights granted and intended to be granted hereunder;
- (c) the Contract constitutes a valid and binding agreement enforceable against it in accordance with its terms (except as such enforcement may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, or similar Laws related to or limiting creditors’ rights generally or general principles of equity);
- (d) the execution and delivery of all other instruments and documents required to be executed pursuant hereto, and pursuant to the Contract and the consummation of the transactions contemplated hereby, and thereby do not and shall not (i) conflict with or result in a breach of any provision of its organizational documents, (ii) result in a breach of any agreement to which it is a party, or (iii) violate any Law;

(e) it will maintain and not obscure the Intellectual Property Rights and proprietary rights, notices and legends of the State on or embodied in the State's Software, Technology and other materials, whether in print, electronic or other form;

(f) it has the full and absolute right to provide the Services to State contemplated hereunder;

(g) Contractor is the owner of the Contractor Technology, Third Party Software and other Pre-Existing Materials licensed hereunder or otherwise has the right to grant, or shall have the full power and authority to grant to the State the rights and licenses described or set forth in the Contract and this Exhibit 6 without violating any rights of any third party and that to the best of Contractor's knowledge there is no actual or threatened rightful suit by any such third party based on an alleged violation of such rights by Contractor;

(h) the EPS, in whole or in part, including Services, the Software, or Hosting Service to the extent provided by the Contractor, or any Work Product, Deliverables or material to be delivered by Contractor, any other software, or technology (including Contractor Technology) that is used or is contemplated to be used by Contractor (or any Contractor Assisting Entity (excluding State Data and State Property)) or delivered by or contemplated to be delivered by or on behalf of Contractor to State shall not infringe or violate, or has not infringed or violated, any Intellectual Property Right, confidentiality right, privacy right or other proprietary right of any third party;

(i) as of the Effective Date, there is no pending litigation, arbitration or other similar proceeding before any tribunal involving a claim of infringement or violation of any third party's Intellectual Property Rights by Contractor (or any Contractor Assisting Entity) or by any technology (including Technology) that Contractor (or any Contractor Assisting Entity) intends to, or will, use to provide the Services and Deliverables, which if adjudicated against Contractor (or any Contractor Assisting Entity) would interfere with Contractor's ability to discharge its obligations hereunder or grant the rights intended to be granted to State hereunder, and Contractor is not aware of, and has not received notice of, any such claim;

(j) all information provided by Contractor related to the discussions and preparation of the Contract, including in its Offer, is true and does not contain any untrue statement of a fact or omit to state a fact necessary or appropriate to make the statements and facts contained herein or in such information misleading; and

(k) the person executing the Contract for Contractor has actual authority to bind Contractor to each and every term, condition and obligation to the Contract, and that all requirements of Contractor have been fulfilled to provide such actual authority;

(l) the Services and Deliverables shall be provided by Contractor in accordance with the Annexes, including the Appendices and the SLAs set forth therein, and the other terms of the Contract, free of all liens, claims, encumbrances and other restrictions;

(m) Contractor, including, for avoidance of doubt, all Contractor Assisting Entities, shall have the requisite expertise and proper skill, training and background so as to be able to perform in such a manner with the qualifications agreed upon hereunder, and that it shall

perform all Services required pursuant to the Contract in a professional, workmanlike manner, with the quality, knowledge and experience in business and systems integration, maintenance, support and operations which is consistent with industry standards applicable to the performance of such Services and that Contractor shall promptly and in accordance with Appendix F re-perform Services which are not in compliance with the foregoing warranty at no cost to the State;

(n) Contractor shall have access to, and shall access the State Software and the State Information only to the extent it is authorized to have such access in accordance with the terms of the Contract and hereof;

(o) Contractor, including, for avoidance of doubt, the applicable Contractor Assisting Entities, and including, for further avoidance of doubt, the provider of Hosting Services shall continuously monitor the security of the Services, and the Hosting Services-to ensure that they are in compliance with the requirements of data security and data privacy (including, without limitation, physical and logical security), including with respect to State Information (and further including for avoidance of doubt, the State departments, agencies and other governmental units subject to the EPS), and the PII rights of any employee, visitor, resident or citizen of Hawaii;

(p) the Deliverables provided by Contractor and all Contractor Assisting Entities shall be free from defects in material and workmanship;

(q) Contractor and all Contractor Assisting Entities shall at all times comply, and provide the Services, Deliverables and the EPS Service IT Environment in compliance, with the terms of the Contract and hereof and obtain prior approval, consent or agreement with or from the State when and to the extent required hereunder or under the Contract in connection with physical and logical security obligations;

(r) Contractor shall comply with all Laws, including, without limitation, HRS §103D-310(c), as amended, in providing the Services and Deliverables, and preparing the Work Products and Deliverables, and discharging its obligations under the Contract and has obtained or will obtain all authorizations, approvals, consents and licenses from third parties (including Government Authorities) necessary or appropriate to provide the Services, Work Product and Deliverables, and grant the licenses and rights to State under the Contract or required of Contractor in connection with its obligations under the Contract and shall assist and cooperate with State, and any other Governmental Authority as necessary or requested by State, in connection with all inquiries, investigations, regulatory activities, regulatory requirements and/or audits of or relating to the Services hereunder and under the Contract;

(s) the Services, Work Product, Deliverables, and Contractor-provided Facilities shall comply with all Laws applicable to Contractor's provision of the Services, Work Product, Deliverables and Contractor-provided Facilities under the Contract;

(t) in accordance with the terms of the Contract, Contractor will continue to provide the Services and Deliverables specified hereunder during the pendency of a Good Faith Dispute or any other dispute in connection with the Contract, including Services and Deliverables which are the subject of such Good Faith Dispute or dispute, in the same

manner and at the same SLAs and other level(s) of service required under the Contract in accordance with the terms hereof;

(u) Contractor shall at all times maintain sufficient financial resources to comply with the requirements of the Contract, provided, however, that if Contractor experiences a change in financial condition that may adversely affect its ability to perform under the Contract, it will immediately notify State, and State and Contractor will meet or confer with respect to mitigating the impact of the same on State;

(v) no part of the Software, other Deliverables, Services or the EPS Service IT Environment shall be State IT Environment Incompatible;

(w) Contractor shall not modify or fail to conform with the State security standards, or provide less protection than otherwise required in the Contract;

(x) it will provide notice promptly to State if a litigation, arbitration or other similar proceeding is commenced during the Term of the Contract before any tribunal involving a claim of infringement, misappropriation, violation or other breach or contravention of any Governmental Approvals or any third party's Intellectual Property Rights by Contractor;

(y) it assigns and shall assign to the State, or otherwise make the State a third party beneficiary of, all of the Contractor's warranties and indemnities relating to the Software to the extent Contractor is permitted by the manufacturers and/or licensors to make such assignments to the State (such assignment or third party beneficiary right is and shall be subject to all of the terms and conditions imposed by the manufacturers and/or licensors with respect thereto);

(z) that it is not, and during the Term of the Contract, shall not be, suspended or debarred under federal law and regulations or any state's laws and regulations;

(aa) the EPS, Implementation Services, and Ongoing Services, including, for convenience of reference, as set forth in "**Appendix E-1, Implementation Services Requirements**" and "**Appendix E-2, Ongoing Services Requirements**," will comply with the SLAs, including, for convenience of reference, as set forth in "**Appendix F, Service Level Agreement Requirements**" and "**Appendix E-2, Ongoing Service Requirements**;"

(ab) Contractor, and all Contractor Assisting Entities, are and shall be duly authorized to conduct business in and are and will be in good standing in each jurisdiction in which Contractor and all Contractor Assisting Entities will conduct business in connection with the Contract;

(ac) it, and all Contractor Assisting Entities, shall comply with all applicable local, State, and federal licensing, accreditation and registration requirements and standards which are applicable to its performance under the Contract and each will maintain all required certifications, licenses, permits, and authorizations during the Term at Contractor's expense;

(ad) it has and shall have the financial stability to carry out at least six (6) months of Services during any period of the Contract without reimbursement for the Services or expenses;

(ae) it has the financial resources to fund the capital expenditures required under the Contract without advances by the State or assignment of any payments by the State to a financing source;

(af) it will deliver and implement the Services and Deliverables (whether performed in whole or in part by Contractor and/or Contractor Assisting Entities, and/or by, or on behalf of, the provider of the applicable COTS Software), on an integrated and seamless basis, with different feature sets, functions, and data working and being processed together continuously and without adjustment or manual intervention;

(ag) the EPS, other Services and other Deliverables shall comply with and operate in accordance with the RFP Requirements; and

(ah) it shall promptly and in accordance with the SLAs correct any Problem or Defect in the EPS, other Services and other Deliverables at no cost to the State.

7.2 Disabling Code. Contractor represents, warrants and covenants to State that, without the prior written consent of State, Contractor shall not insert into any Software any code that is intended to disable or otherwise shut down all or any portion of the Software, other Deliverables, or Services. Contractor further covenants that, with respect to any disabling code that may be part of the Software, Contractor shall not invoke or cause to be invoked such disabling code at any time, including upon expiration or any termination of the Contract. Contractor also covenants that it shall not use Software containing disabling code without the prior written approval of State. For purposes of this Section, code that serves the function of ensuring software license compliance (including passwords) shall not be deemed disabling code, provided that Contractor will learn from Third Parties whether such code is included in third party software and shall notify State accordingly and obtain State's approval prior to installing such code in any Software or using it as part of the Services.

7.3 Malicious Code. Contractor represents, warrants and covenants to State that it shall prevent the introduction and proliferation of Malicious Code into the State IT Environment, or any system used to provide the Services and Deliverables, including by continuously performing testing for Malicious Code, using one or more industry standard testing solutions, and to notify State promptly by notification to the State's Project Manager of any Malicious Code in any of the foregoing if Contractor obtains knowledge thereof and/or as soon as Contractor learns or is informed of the introduction of, or an attempt to introduce, Malicious Code into any of the foregoing, and shall comply with the security provisions herein and in the Contract. Without limiting Contractor's other obligations under the Contract, in the event Malicious Code is found in any Software, other Deliverables, or the Services, Contractor shall immediately, at no additional charge to State, eliminate or permanently quarantine such Malicious Code and reduce the effects of such Malicious Code and, if such Malicious Code causes a loss of operational efficiency or loss of data (including State Information), mitigate such Losses and immediately restore such data and information. Contractor shall promptly assign at least one (or such number as is required to promptly remedy the situation) knowledgeable and qualified Contractor Personnel

representative, who will begin work upon becoming aware of any Malicious Code. This representative will be dedicated to remedy any Defect or Problem related to the Malicious Code at no Cost to the State.

7.4 Compliance Reports. Contractor represents, warrants and covenants to State that it will provide State with data and reports (including as can be generated by or from Contractor's computer system) necessary or appropriate for State to comply with all Laws and SLAs applicable to the Services.

7.5 Deliverables. Notwithstanding any provision in the Contract, Contractor represents, warrants and covenants to the State, as an essential part of the Contract that during the Deliverable Warranty Period, each Deliverable, including the EPS and Hosting Services, in whole and in part, shall conform to and perform in accordance with its applicable specifications and RFP Requirements. Contractor shall promptly and in accordance with Appendix F repair or replace each of the Deliverables that does not meet its specifications and RFP Requirements during the Deliverable Warranty Period (which begins upon Go-Live of EPS, in whole or in part, and Acceptance of each other Deliverable in accordance with the terms of the Contract and continues for one (1) year (the "**Deliverable Warranty Period**")) at no charge to the State. If a Deliverable includes any products provided by a Third Party, such as equipment or Third Party Software or other software or Technology, Contractor shall fully cooperate with and coordinate the work with such Third Party and the State to promptly and in accordance with Appendix F repair and replace the Deliverables at no charge to the State during the Deliverable Warranty Period. Contractor also warrants that it has and shall have the capability and capacity to produce the Deliverables it has agreed to provide to the State and that it shall procure those Software licenses necessary to provide the Deliverables to the State hereunder and under the Contract. If additional Software licenses or Deliverables, including but not limited to Enhancements, are needed to the Third Party Software specified in the accepted Offer for Contractor to meet this representation, warranty and covenant, Contractor shall provide such Software licenses and Deliverables at no additional Cost to the State.

7.6 Non-Obsolescence. Contractor represents and warrants that, except as provided in this Section, the Software and/or Purchased Equipment provided under the Contract will not become Obsolete during the term of the Contract. The cost of replacement of Obsolete Software and/or Purchased Equipment through planned Obsolescence by the applicable manufacturer and/or licensor is included in the Costs to be paid by the State pursuant to the terms hereof and of the Contract. In the case that any such Software and/or Purchased Equipment's end-of-service-life occurs during the Term of the Contract, Contractor will replace the affected Software and/or Purchased Equipment with like-functionally equivalent Software and/or equipment that is supported by the applicable manufacturer and/or licensor without additional cost to the State. Notwithstanding the foregoing, in the event Contractor is made aware of a manufacturer and/or licensor's planned obsolescence after the Term expires, Contractor will provide notice to the State.

7.7 Legal and Regulatory Compliance. Contractor represents that, at the time of implementation, the EPS, in whole and in part, shall comply with all applicable State Laws as interpreted in writing by State in the RFP Requirements for Contractor to implement and with all federal Laws. Contractor also warrants that, during the term, the EPS, in whole and in part, shall comply with State Laws as interpreted and provided in writing by State in the RFP Requirements

and with all applicable federal Laws, subject to Change Orders that describe: (a) changes that shall be made to the EPS after its implementation to comply with such representation and warranty at no additional charge for federal changes and at amounts in the Change Order to design, develop and implement State changes; and (b) a plan for the Implementation Services to design, develop and implement such changes. Each such Change Order shall describe how the parties will design, develop and implement each such change to meet federal and/or State mandated schedules unless an Implementation will negatively impact the State or is infeasible, in which case the parties will negotiate in good faith a Change Order to address the implementation and schedule. The Change Order shall also describe a good faith Implementation process to protect the State's business operations. After Acceptance of Deliverables that include Software to comply with changes to applicable federal and State Laws as described above, including the EPS, Contractor shall correct failures to comply with those changes to applicable federal Laws and State Laws as interpreted and provided in writing by State at no charge or as otherwise described in the applicable Change Order, and annual Charges for Maintenance Services for Software resulting from changes to State Laws shall be limited to 10% of the Charges to design, develop and implement such changes, as described in the applicable Change Order.

7.8 Deliverables are Date/Time Independent. Contractor represents, warrants and covenants that the Deliverables and all data-related output or results produced thereby: (i) shall not have a life expectancy limited by date or time format; (ii) shall correctly record, store, process, and present calendar dates; (iii) shall lose no functionality, data integrity, or performance with respect to any date; and (iv) shall be interoperable with other software used by the State that may deliver date records from the Deliverables and Services, or interact with date records of the Deliverables and Services.

7.9 Physical/Electronic Media Warranty. To the extent applicable, Contractor represents, warrants and covenants (during the Term of the Contract) that each copy of the Custom Software provided by Contractor is and will be free from physical defects in the media that tangibly embodies the copy, or if electronically delivered, the electronic file transferred, during the Deliverable Warranty Period.

7.10 Compatibility. Contractor represents, warrants and covenants that, throughout the Term of the Contract, if the EPS, in whole or in part, is replaced or Upgraded or subject to an Enhancement by or on behalf of Contractor with replacement or Upgraded Software (or Software subject to an Enhancement) components provided by or on behalf of Contractor, or Contractor provides Custom Software Deliverables, Updates, Upgrades and/or Enhancements, the Software as upgraded, replaced, and/or modified shall operate with the EPS Service IT Environment, other Technology used by the State, including the Software, State Third Party Software, Purchased Equipment and State Data without loss of any functionality. If State decides to have Contractor produce Enhancements or to upgrade any of the Third Party Software which is used as part of the System with new versions or releases as part of a Change Order, Contractor shall, at no additional cost to State beyond the Change Order Charges, if any, install, test, and maintain the Software to operate in accordance with its Specifications and to be compatible with the Enhancements and new versions, Upgrades or releases of the Third Party Software referred to in the Change Order.

7.11 Appendices. For the avoidance of doubt, the representations, warranties and covenants in this **Section 7** are in addition to, and not by way of limitation of, any representations, warranties and covenants in an Annex.

8. Indemnification.

8.1 Indemnification by Contractor. In addition to, and not by way of limitation of, the provisions of Sections 7 and 8 of the General Conditions, Contractor shall indemnify, defend, save and hold harmless State and its officers, authorized representatives, employees, agents, successors and permitted assigns (collectively, the “**State Indemnified Persons**”) from any and all Losses arising from, in connection with, as a result of, caused by, or based on, any allegations, actions, demands or claims:

(a) of any breach of any representation, warranty or covenant made by Contractor herein or in the Contract;

(b) of any hacks with respect to, or attacks on, the State IT Environment, State Property or any State Information (whether or not hosted at the State IT Environment) by one or more of the Contractor Personnel or the willful interference with State’s information technology operations by one or more of the Contractor Personnel during their employment or retention or engagement (or thereafter using the knowledge obtained during their employment, retention or engagement) by Contractor, a Contractor Assisting Entity and/or any other party assisting in the performance or the support of the Services or provision of any Deliverable or Work Product, in performing or assisting in the performance or support of the Services or the provision of the Deliverables and/or Work Product;

(c) resulting from the actions of Contractor, a Contractor Assisting Entity or any party performing or assisting in the performance of the Services and/or willful misconduct, fraud or negligence by any of the foregoing entities;

(d) relating to the death or bodily injury of any agent, employee, invitee, visitor or other person caused by the tortious conduct of one or more of the Contractor or Contractor Assisting Entities arising from, in connection with, as a result of, caused by or based on the Contractor’s or any Contractor Assisting Entity’s (or any party performing or assisting in the) performance of or omission in the performance of, the Services;

(e) relating to the damage, loss or destruction of any property caused by the conduct of Contractor, a Contractor Assisting Entity or any party performing or assisting in the performance of the Services or provision of the Deliverables and/or Work Product;

(f) of a breach of any covenant or other obligation pursuant hereto or the Contract by Contractor, a Contractor Assisting Entity, or any party performing or assisting in the performance of the Services or provision of the Deliverables and/or any Work Product;

(g) that the performance of Services or provision of the Contractor Technology, Deliverables and/or Work Product (including, for avoidance of doubt, as performed in whole or in part by one or more Contractor Assisting Entities, or any party performing or assisting in the performance of the Services or provision of the Deliverables) and/or the Service or Contractor Technology, Deliverables and/or Work Product, infringes, misappropriates or otherwise violates any Intellectual Property Right, confidentiality right, privacy right, database right or other proprietary right of any third party;

(h) that no part of the Deliverables, Work Product, Services or EPS Service IT Environment is State IT Environment Incompatible;

(i) as set forth in Section 2.7; and/or

(j) based on, any hacks with respect to, or attacks on, the State IT Environment, State Property or any State Information (whether or not hosted at the State IT Environment or at State) or other data breaches or confidentiality breaches directly or indirectly arising from, in connection with, as a result of, or based on, the EPS System.

8.2 Indemnification Process Terms. If any claim is made against the State or a State Indemnified Person, notice thereof shall be given by State to Contractor, but any failure to provide such notice shall not limit the Contractor's indemnification or defense obligations to the extent the Contractor is not prejudiced thereby. Contractor will assume, at its expense, the defense of such action on behalf of the State, provided that the State shall nonetheless have the right to participate in such proceedings and to be represented by counsel of its own choosing, and the cost and expense attributable to such counsel shall be borne solely by the Contractor. Notwithstanding the foregoing, the State shall have the right to file an answer or motion to prevent the entry of a default judgment against it. The State shall reasonably cooperate, at the cost of the Contractor, with the Contractor's defense of such claim and any appeal arising therefrom. The exercise by the State of its option to participate in the claim, action or proceeding and/or to select its own separate counsel shall in no way limit or modify Contractor's obligations set forth in this **Section 8.2**. Notwithstanding the foregoing, if any claim of infringement of Intellectual Property Rights could result in the entry of equitable relief against the State, the State shall have the option, in its sole discretion and cost, to assume the right to control and direct the investigation into such claim and the defense and settlement thereof for the State. Without limiting the foregoing, Contractor shall not agree to any settlement of any claim without the State's prior written consent. Further, without limiting the generality of the foregoing, Contractor may not, without the State's prior written consent, settle, compromise or consent to the entry of any judgment in any such commenced or threatened action, unless such settlement, compromise or consent: (a) includes an unconditional release of the relevant State Indemnified Person from all liability arising out of such commenced or threatened action; and (b) does not include a statement as to, or an admission of fault, culpability or failure to act by or on behalf of, the State or otherwise adversely affect the State.

8.3 Contractor Software or Services Infringement. In the event (a) any part of the Services, the Deliverables, Work Product or the EPS Service IT Environment or other Software or technology (including Technology), methodology or other products or materials used by Contractor or any Contractor Assisting Entity ("**Subject Materials**") is found to infringe upon, misappropriate or violate any Intellectual Property Rights of any third party in any country or (b) the continued use of any of the foregoing Subject Materials is enjoined, Contractor shall, in addition to defending, indemnifying and holding harmless State as provided in **Section 8.1** and to the other rights the State may have under the Contract, promptly and at its own cost and expense and in such a manner as to minimize the disturbance to State's operations: (a) obtain for State at Contractor's sole expense a license or other right to continue using and receiving the benefits of such Subject Materials for the Services, Work Product and Deliverables; (b) modify such Subject Materials so that all or the relevant portion thereof is no longer infringing (provided that such modification does not degrade the performance, functionality or quality of the Services or

adversely affect State's intended use as contemplated by the Contract); and/or (c) replace such Subject Materials or the applicable portion thereof with a non-infringing functional equivalent acceptable to State.

9. Disclaimer of Warranties. EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH HEREIN, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, AND EACH EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER IMPLIED OR STATUTORY OR ARISING OUT OF CUSTOM OR COURSE OF DEALING OR USAGE OF OR IN THE TRADE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, STATE DOES NOT REPRESENT, WARRANT OR COVENANT THAT THE STATE IT ENVIRONMENT WILL BE ERROR-FREE OR WILL BE AVAILABLE TO CONTRACTOR ON AN UNINTERRUPTED BASIS.

10. Software Escrow.

10.1 Contractor shall provide the State with the Source Code Form of all Software and associated Source Materials for all Software licensed for Use by the State from Contractor or used by Contractor to provide the EPS including any Third Party Software, if Contractor and/or its Contracting Assisting Entities make such Software available directly to State, and for the Custom Software. Contractor shall provide such Source Code and Source Materials at no additional cost on magnetic media, or other electronic format that is acceptable to the State.

10.2 If Contractor and/or its Contracting Assisting Entities do not directly provide the Software in Source Code Form to the State, Contractor shall provide the State through the Escrow Agent, pursuant to **Schedule 3** of this **Exhibit**, with a copy of the Source Code, object code, and updated associated Source Materials for Contractor-owned or Contractor Assisting Entity-owned Software, including Pre-Existing Works, and any other Software, including Third Party Software, which Contractor is permitted by its license agreements to provide to sublicensees (including the State), in its then-current condition and as Updated or Upgraded during the Term.

10.3 Within ten calendar days of acceptance of the applicable Deliverables with Software, or as otherwise specified herein or elsewhere in the Contract, including for the avoidance of doubt, an Appendix, or other Annex, Contractor provide the State directly or shall place a copy of the Source Materials with the Escrow Agent pursuant to the Escrow Agreement. Contractor shall thereafter regularly update the Software Source Code, Software executable code, and Source Materials as required to keep the Source Materials current with the then-existing Software, provided, that it shall do so at least on calendar quarterly basis and in any event within ten calendar days of a written request of State.

10.4 Upon State's request, but no more than once per year unless Contractor is not in compliance with its escrow obligations, Contractor will certify in writing its compliance with **Section 10.2** and with the Escrow Agreement during the term thereof, which certification will be signed by an officer of Contractor. If the State obtains the Source Code, object code, and Source Materials from a release of these materials pursuant to the Escrow Agreement, Contractor hereby grants to State a non-exclusive, transferable, perpetual (or for the longest period permitted by applicable law), irrevocable, license to Use, execute, alter, adapt, create updates to, and modify, enhance and create derivative works based on the Software (all of which State shall own), reproduce, display, transmit, make available, perform and distribute the Source Materials and

authorize others to do any. Further, Contractor consents to, and shall cooperate with, State contacting and obtaining assistance from the programmers after it has received the Source Materials.

10.5 Contractor shall be responsible for payments due to the escrow company and for making each escrow deposit.

11. Subcontracting.

11.1 In addition to, and not by way of limitation of, the provisions of Sections 6 and 17.c. of the General Conditions and the other provisions hereof and thereof: (a) no work or services, including Services or Deliverables, shall be subcontracted or assigned without the prior written approval of the State Program Manager, which approval is subject to the Contractor Subcontractor's continuing compliance with applicable Law; (b) no subcontract shall under any circumstances relieve Contractor of its obligations, responsibilities and liability under the Contract; (c) Contractor fully guarantees the performance of its Contractor Subcontractors and shall at all times be responsible for the obligations, actions (including failure to act) and performance and defaults of such Contractor Subcontractors as if they were the obligations, actions (including failure to act), performance and defaults of Contractor; and (d) all persons engaged in performing the work covered by the Contract shall be considered employees of the Contractor. All proposed Contractor Subcontractors must be approved in advance by the State pursuant to this **Section 11**. All proposed Contractor Subcontractors deemed approved pursuant to the contract shall be deemed approved hereunder. No Contractor Subcontractor shall provide any Service or Deliverables other than that approved by the State.

11.2 With respect to each proposed Contractor Subcontractor, the Offeror/Contractor shall:

(a) Identify the proposed Contractor Subcontractor, including by providing its full corporate name and the address of its headquarters and the address of its office providing the services and other contact information for that office, and its primary executives and its key personnel who are contemplated to provide and manage the Services;

(b) Specify with particularity the Services the proposed Contractor Subcontractor will perform; and

(c) Provide sufficient information for the State to conduct background checks on the proposed Contractor Subcontractor and its personnel, and supplement such information from time to time at the request of the State.

11.3 The Contractor Subcontractors providing Services shall meet the same service requirements and provide the same quality of service required of the Contractor and in a timely manner. The Contractor shall manage the quality and performance, project management and schedules and timely start and completion of Services by each of its Contractor Subcontractors. The Contractor shall be solely responsible and accountable for the completion of all Services it has subcontracted.

11.4 In addition to any rights the State has under Law, the State shall have the right to require the removal of a Contractor Subcontractor or any of its personnel providing or supporting

services for good cause. In such case, the State shall specify the deadline for such removal after consultation with the Contractor. A subcontractor proposed by the Contractor to replace the removed Contractor Subcontractor shall be subject to the approval provisions of this **Section 11**.

11.5 The State shall have the right to directly retain any former Contractor Subcontractor, and any Contractor Subcontractor after the expiration, termination or suspension of the Contract, including any Contractor Subcontractor providing services subject to any part of the Contract that is terminated or suspended.

12. Record Retention.

12.1 Record Retention. Contractor shall comply with, and shall cause the Contractor Subcontractors to comply with, all Law (including, for clarity, federal Law) regarding the retention of and provision of access to records relating to the Contract and its performance (including failure to perform or to satisfactorily perform an obligation in whole or in part) hereunder. The foregoing records are referred to as “**Government Records**.”

12.2 Contract Records. Without limiting its obligations with respect to Government Records, Contractor shall maintain, and shall cause each Contractor Subcontractor to maintain, complete, accurate and up-to-date records and supporting documentation, including with respect to all transactions, authorizations, changes, implementations, electronic document accesses, reports, filings, analyses, procedures, controls, records, data or information created, generated, collected, processed or stored by Contractor in the performance of the Services and its obligations under the Contract (collectively, “**Contract Records**”).

12.3 Retention Period. Contractor shall retain, and shall cause each Contractor Subcontractor to retain, all Government Records and Contract Records during the Term of the Contract, including extension and for a period of not less than three (3) years after expiration or termination (but not its suspension) of the Contract or for such longer period required by Law or the terms hereof with respect to the applicable Government Records and/or Contract Records.

12.4 Litigation Retention. Without limiting the foregoing, Contractor shall retain, and shall cause each Contractor Subcontractor to retain, all Government Records and/or Contract Records related to, arising out of, or connected to the Contract with respect to: (a) any litigation, (b) any dispute before any tribunal, (c) any claim that is not resolved for one (1) year, or (d) any other disputes or claims, for a minimum of six (6) years from the date of the last action with respect to such litigation, dispute, or claim of which Contractor is aware.

13. Relief Available to State.

13.1 Specific Remedies. In addition to all rights and remedies available to the State provided in the Contract, including for clarity, the General Conditions, or otherwise provided by Law, if Contractor is not in compliance with Contract terms, the State may, without being considered in breach of the Contract:

(a) Suspend Payments. Temporarily withhold or disallow all or part of the billing Cost/payments pending correction of a deficiency in or a non-submission of a required Deliverable or failure to meet scheduled delivery times and/or milestones by the Contractor or other non-performance of Contractor’s obligations;

(b) Receive Reimbursement. Receive reimbursement from the Contractor or withhold future payments for any funds paid to the Contractor subsequent to a determination that such was unauthorized, fraudulently obtained, or inappropriately billed.

(c) Receive Market Value. In the event the Contractor fails, refuses or neglects to perform the Services or provide Deliverables, including meeting delivery times and/or milestones in accordance with the terms of the contract, the State reserves the right to purchase, in the open market, a corresponding quantity of the Services and Deliverables, and to deduct from any monies due or that may thereafter become due to the Contractor, the difference between the Cost set forth in the Contract and the actual cost to the State. In case any money due the Contractor is insufficient for said purpose, the Contractor shall pay the difference upon demand from the State. The State may also utilize all other remedies provided by Law.

(d) Reductions in Payments Due. Amounts due State by Contractor, including but not limited to liquidated or other damages, or claims for damages, may be deducted or set off by State from any money payable to Contractor pursuant to this Contract.

(e) Change Orders; Contractor Termination. If Contractor fails or refuses to: (i) negotiate a Change Order in good faith; or (ii) perform its Services pursuant to an agreed upon and executed Change Order, Contractor shall be in material breach of this Contract, and the State shall have the right to terminate the Contract for such a breach in accordance with Section 13 of the General Conditions without any further liability to the State.

(f) Termination for Rejection of Deliverables. If Contractor is unable to correct Defects and Problems in a Deliverable or Service pursuant to Exhibit 6, State shall have the right to immediately terminate this Contract, in whole or in part, immediately or at such other time indicated in a notice of termination without penalty or liability to State, with such a termination being deemed a termination due to the material breach of Contractor hereunder, and return the Deliverable, if applicable, to Contractor, and other Deliverables in State's judgment. If State terminates this Contract under this Section, Contractor shall, within 20 days thereafter, refund to State all payments made to Contractor for the returned Deliverable and Services rendered therefor and other Deliverables in State's judgment, in whole or in part.

(g) SLAs. If any Deliverable, including but not limited to the EPS, in whole or in part, fails to meet its SLAs during the term and while Contractor is providing Maintenance Services, Contractor shall modify, reconfigure, upgrade or replace EPS components, including but not limited to Software and Equipment at no additional cost to State in order to provide a solution that complies with such SLAs.

(h) Suspension for Convenience. State shall have the right at any time to order the Services or Deliverables of Contractor fully or partially stopped for its own convenience for up to 45 consecutive days. Contractor will receive notice of the reasons for such an order. Contractor shall have the right to submit claims as a result of stop work orders issued under this Section.

(i) Right to Assurance. If State, in good faith, has reason to believe that Contractor does not intend to, or is unable to perform or has refused to perform or continue performing all material obligations under this Contract, State may demand in writing that Contractor give a written assurance of intent to perform. Failure by Contractor to provide written assurance within the number of days specified in the demand (in no event less than five business days) may, at

State's option, be the basis for terminating this Contract under the terms and conditions or other rights and remedies available by law or provided by this Contract.

(j) Corrective Action Plans. State Request for Corrective Action Plan. State may require Contractor to submit to State a Corrective Action Plan to correct or resolve a specific event or events causing the finding of a Defect and Problem or breach or prior to assessment of a liquidated damage.

(i) Scope of the Corrective Action Plan. The Corrective Action Plan required by State under this Section must provide:

(a) Contractor's detailed explanation of the cause or reasons for the cited Defect and Problem or breach;

(b) Contractor's assessment or diagnosis of the cause of the cited Defect and Problem or breach; and

(c) Contractor's specific proposal to cure or resolve the Defect and Problem or breach.

(ii) Submission and Approval of Corrective Action Plan. The Corrective Action Plan must be submitted within ten business days following the request for the Corrective Action Plan by State or another date acceptable to State. The Corrective Action Plan shall be subject to the written approval by State.

(iii) Contractor Responsibility for Performance. Notwithstanding Contractor's submission and State's acceptance of a Corrective Action Plan, Contractor remains responsible for achieving all SLAs and compliance with all other obligations under this Contract. Further, State's acceptance of a Corrective Action Plan under this Section shall not:

(a) Excuse Contractor's prior performance;

(b) Relieve Contractor of its duty to comply with performance standards; or

(c) Prohibit State from assessing additional remedies or pursuing other appropriate remedies for continued substandard performance.

(k) Guaranty.

(i) Submission. Within 10 Days of the Effective Date, Contractor shall provide State with a Guaranty in the form of **Schedule 1** to this **Exhibit**, which is attached hereto and incorporated by this reference, executed by the ultimate parent company of its organization. Contractor shall take all actions necessary to ensure that, if Contractor is acquired by or merges with another party or there is otherwise a change in Control of Contractor to another party, including without limitation by asset or stock sale, merger, transfer of ownership, divestiture, spin-out, spin-off, or any other way,

then the ultimate parent company of that other party shall execute the Guaranty within ten Days of such acquisition, merger or change in Control.

(ii) Failure to Comply. Failure to comply with the obligations in this Section by Contractor shall entitle State to exercise its available remedies at law, in equity, and under this Contract. In addition, any such acquisition, merger, divestiture, spin-out, spin-off, or other change in Control of Contractor shall be null and void under this Contract, and State shall have the right to rescission of this Contract, and to exercise its license to the Software Source Code under **Section 10**.

(l) Letter of Credit.

(i) Value. The Letter of Credit shall secure the performance of Contractor, including without limitation performance of the Services in accordance with the Work Plan and providing Deliverables in accordance with the Specifications, and shall secure any damages, cost or expenses resulting from Contractor's default in performance hereunder or liability caused by Contractor. Contractor may satisfy the obligation to provide a Letter of Credit through provision of one or more Letters of Credit on behalf of Contractor or from various sources.

(ii) Payments. The Letter of Credit shall become payable to State for any outstanding damage assessments made by State against Contractor. An amount up to the full amounts of the Letter of Credit may also be applied to Contractor's liability for any administrative costs and/or excess costs incurred by State in obtaining similar Software, Deliverables, other products and Services to replace those terminated as a result of Contractor's breach. State may seek other remedies in addition to this stated liability. It is understood and agreed that the form of the Letter of Credit shall be substantially similar to the form in **Schedule 2** to this **Exhibit**.

(iii) Review and Acceptance by State. Prior to acceptance of the Letter of Credit, the State reserves the right to review and give its acceptance of the Letter of Credit. If the Letter of Credit expires based on its terms, Contractor shall immediately renew or establish a new Letter of Credit during the term. Both the initial expense and the annual premiums on the Letter of Credit shall be paid by Contractor. Failure to provide an acceptance Letter of Credit within 30 days of the Effective Date and during the term shall be a material breach of this Contract.

13.2 Work Plan.

(a) The Work Plan will be the first Deliverable provided by Contractor to the State. Contractor shall produce and provide to State this Work Plan as a Deliverable with input from State within 21 Days of the Effective Date. The Work Plan shall provide detailed information, in a Microsoft Project (Version 2010 or later) document, including but not limited to tasks, Deliverables, schedule, tasks and task dependencies, identification of resource requirements, and the Payment schedule. The Work Plan shall be inclusive of the mutual expectations and work to be performed by State and Contractor in order to complete the Project successfully. In the event of failure of the parties to agree upon the update to the Work Plan and/or of State to give its Acceptance thereof within 45 days of the Effective Date, State may invoke its right to immediately terminate this Contract, and, in State's discretion, pursue negotiations with an alternative vendor.

(b) Contractor shall maintain the Work Plan. Contractor shall adhere to the Work Plan and its associated Schedule. The schedule in the Work Plan shall not change as a result of time required by Contractor to correct Defects and Problems, unless otherwise agreed beforehand in writing by State. However, the Schedule may, in State's discretion, be extended on a day-to-day basis to the extent that State's review of a Service or Deliverable and review of corrections of Defects and Problems in accordance with the Acceptance process is longer than described in the Schedule.

(c) Contractor shall provide State with updates to the Work Plan monthly, as described in the RFP and accepted Offer, and as otherwise necessary throughout the term of this Contract to accurately reflect the status of activities, tasks, events, Services, Deliverables and projected Schedule(s) for such activities, tasks, events, Services and Deliverables. Contractor will present the updated Work Plan at a time agreed to by the parties in writing, and the updated Work Plan will highlight changes made from the prior Work Plan. Any such update changes must be agreed upon in writing by the State Project Manager. Any Work Plan change request which would result in an increased cost to State shall be considered a Change Order. Any Work Plan change that would require an amendment to this Contract shall be approved by the Agency procurement officer or his or her designee in writing. The Work Plan progress updates shall allow adequate time, in State's reasonable judgment, for State to review and comment on the updates, as well as any new or modified Deliverables, and revision or correction of Deliverables by Contractor. However, unless otherwise specifically agreed to in writing by the Agency procurement officer or his or her designee in writing, State's agreement on a change to the Work Plan shall not relieve Contractor of liability for liquidated damages and other damages arising from such failures to perform its obligations as required herein. Contractor shall provide updated copies of its detailed Work Plans in Microsoft 2010 format and an online manner accessible and usable by State.

13.3 Acceptance Process.

(a) Contractor must give Confirmation for each Deliverable before State shall begin performing Acceptance Tests. Upon delivery of a Service or Deliverable and receipt of Confirmation from Contractor that the Service or Deliverable meets applicable Specifications, State will, with Contractor's assistance at no additional charge and in accordance with the Work Plan, review or perform Acceptance Tests on the Service or Deliverable, as applicable, to determine whether there is conformation to such Specifications. State will provide Acceptance for a Service or Deliverable if it has no Defects and Problems, except as noted below. However, if a Defect and Problem is found, State will notify Contractor in an e-mail or other document of Defects and Problems used as the grounds for State's decision not to give Acceptance. Contractor shall correct Defects and Problems at no cost to State and State which will review or perform Acceptance Tests to verify whether the Service or Deliverable lacks Defects and Problems (except as noted below) and in writing shall either give its Acceptance or reject it following such review or Acceptance Tests. State's times for providing notice of Defects and Problems, Contractor's times for correcting Defects and Problems and State's review thereof shall be in accordance with the timeframes set in the Work Plan, or, if time periods for providing notice of Defects and Problems, correcting Defects and Problems by Contractor and reviewing and retesting the corrected Services or Deliverables are not in the Work Plan, each such time period shall be ten business days.

(b) If Contractor is unable to correct all Defects and Problems within the number of days described in the Work Plan following the scheduled Acceptance Date, or if no such date is in the Work Plan, State may, within 30 days from such scheduled Acceptance Date, at its sole option: (a) continue reviewing or performing Acceptance Tests on the Deliverable or Service and require Contractor to continue until Defects and Problems are corrected or eliminated; (b) require Contractor to provide, at its expense, a replacement Deliverable or Service for further review or Acceptance Tests; (c) set-off from the Charges to the extent State determines the Defects and Problems for the Service or Deliverable have not been corrected and provide Acceptance for the applicable Service or Deliverable; or (d) after completion of the process set forth in this **Section** and providing notice of default to Contractor, terminate this Contract in whole or in part as described in **Section 13.1(f) of Exhibit 6**.

(c) After Acceptance of a Deliverable or Service, State shall, with input from Contractor, determine whether the Deliverable or Service, if applicable, is ready for Go-Live. Contractor shall put the Deliverable or Service into Production after State gives Contractor Notice that the Deliverable or Service is ready for Go-Live.

(d) Contractor shall provide to State Services and Deliverables pursuant to this Contract on or before the applicable Service or Delivery Dates. All such Services and Deliverables made pursuant to this Contract must be complete. Contractor shall deliver hard copy and electronic versions, when required, of the Deliverables in formats agreed to by the parties.

(e) In the event of a contradiction, conflict, ambiguity or inconsistency in or between Deliverables and other documents comprising this Contract, including without limitation, a Deliverable that has already received Acceptance from the State Project Manager, the RFP, the Response, and any future amendments to this Contract, any such contradiction, conflict, ambiguity or inconsistency shall be resolved in accordance with State's judgment and in favor of

the latest State-approved Deliverable except in the case where a previous documented requirement is inadvertently omitted or not addressed directly or accurately in a subsequent Deliverable. No requirements can be omitted from the RFP Requirements for a Service or Deliverable without the written consent of the State Project Manager.

14. Insurance.

14.1 Maintenance of Insurance. Contractor shall, at its sole cost and expense, obtain, and, during the term of the Contract, maintain, in full force and effect, the insurance coverage described in this **Section 14**. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the State of Hawaii and having at least an A.M. Best rating of A-. Contractor shall include the State as an additional insured Party on the Commercial General and Automotive Liability policies. Such insurance shall apply as primary insurance for these insureds. If Contractor fails to buy and maintain the insurance coverage described in this **Section 14**, the State may terminate the Contract as a substantial breach of the Contract in accordance with Section 13 of the General Conditions or purchase such insurance at the cost of the Contractor. The minimum acceptable limits shall be as indicated below:

14.2 General Liability. Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than two million dollars (\$2,000,000) per occurrence/four million (\$4,000,000) dollars general aggregate.

14.3 Business Automobile Liability. Comprehensive Business Automobile Liability (owned, hired, or non-owned vehicles) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than one million dollars (\$1,000,000) per occurrence.

14.4 Employers' Liability Insurance. Employers' Liability insurance covering the risks of Contractor Personnel's and Contractor Assisting Entities personnel's bodily injury by accident or disease with limits of not less than one million dollars (\$1,000,000) per accident for bodily injury by accident and one million dollars (\$1,000,000) per employee for bodily injury by disease;

14.5 Excess Coverage. Umbrella policy providing excess limits over the primary policies in an amount not less than two million dollars (\$2,000,000); and

14.6 Crime Coverage. Crime Coverage with coverage of not less than ten million dollars (\$10,000,000) single limit per loss and five million dollars (\$5,000,000) in the aggregate, which shall at a minimum cover occurrences falling in the following categories: Computer and Funds Transfer Fraud; Forgery; Money and Securities; and Employee Dishonesty.

14.7 Professional Liability. Technology and Professional Liability or Errors and Omissions including data protection, with coverage of not less than ten million dollars (\$10,000,000) per claim and ten million dollars (\$10,000,000) in the aggregate. Such coverage shall include financial losses arising from the Services or services performed and/or Deliverables and/or Work Product provided by Contractor in connection with the Contract as well as all costs associated with security breaches and data losses and/or breaches of, or losses of, personal data regardless of cause (including Contractor negligence). The provisions of this paragraph shall survive the expiration or termination of the Contract.

14.8 Cyber-Security Insurance. Cyber-security insurance, with coverage of not less than \$6 million per occurrence/\$12 million general aggregate, that includes but is not limited to coverage for first-party costs and third-party claims from: (i) failure to protect data, including unauthorized disclosure, use or access, (ii) security failure or privacy breach, (iii) failure to disclose such breaches as required by law, regulation or contract, (iv) notifications, public relations, credit monitoring, postage, advertising, and other services to assist in managing and mitigating a cyber-incident, (v) interruptions of business operations, (vi) network security failure, (vii) cyber-extortion, (viii) cyber-terrorism, (ix) communications and media liability (e.g., infringement of copyright, title, slogan, trademark, trade name, trade dress, service mark or service name in the policyholder's covered material), (x) EFT, computer, and electronic transmissions fraud and theft, and (xi) other cyber-liability and cyber-crime expenses.

14.9 Workers' Compensation. Appropriate levels of per occurrence insurance coverage for Workers' Compensation and any other insurance coverage required by Law.

14.10 Deductibles. The Contractor shall be responsible for the payment of any deductible applicable to any policy.

14.11 Certificates of Insurance. The Contractor shall deposit with the Procurement Officer, on or before the effective date of the Notice to Proceed, certificate(s) of insurance necessary to satisfy the State that the provisions of the Contract have been complied with, and to keep such insurance in effect and provide the certificate(s) of insurance to the State during the entire term of the Contract. Upon request by either the Procurement Officer, the Contract Administrator, or other legal representative of the State, the Contractor shall furnish a copy of the policy or policies. The certificates of insurance shall contain the following clauses:

(a) Additional Insured. The State of Hawaii is added as an additional insured as with respect to operations performed for the State of Hawaii; and

(b) Non-Contributory. It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by these policies.

14.12 Umbrella Policies. If an umbrella policy is used to satisfy any required coverage of this **Section 14**, such policy shall be at least "Follow-Form" with the requirements described in this **Section 14**, and shall not limit the coverage of any other policies used to provide coverage under this **Section 14**.

14.13 Notice of Cancellation. The Contractor will immediately provide written notice to the State Program Manager should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, materially modified, or not renewed upon expiration. In addition, all policies shall be endorsed with a statement that the coverage may not be canceled, altered or permitted to lapse or expire without thirty (30) days' advance notice to the State Program Manager.

14.14 Failure to Maintain Insurance. Failure of the Contractor to provide and keep in force such insurance shall constitute a material default under the Contract, entitling the State to exercise any or all of the remedies provided in the Contract (including without limitation terminating the Contract). The procuring of any required policy or policies of insurance shall not be construed to limit the Contractor's liability under the Contract, or fulfill the indemnification

provisions of the Contract. Notwithstanding said policy or policies of insurance, the Contractor shall be responsible for the full and total amount of any damage, injury, or loss caused by the Contractor's negligence or neglect in the provision of Services or services and/or provision of Deliverables and/or Work Product under the Contract.

15. Force Majeure and Business Continuity; Data Backup and Recovery.

15.1 Business Continuity Plan. Immediately upon the occurrence of a disaster (as such term may be defined in the Business Continuity Plan, which includes a disaster recovery plan ("**Disaster Recovery Plan**"), (developed from the requirements related to "**DR**" in "**Appendix E-1, Consulting Services Requirements**" and "**Appendix E-2, Ongoing Services Requirements**") (the "**Business Continuity Plan**") or other event covered by the Business Continuity Plan, Contractor shall implement the appropriate portions of its Business Continuity Plan and take whatever additional steps are necessary or appropriate to limit any period of time in which the performance or provision of the Services, Deliverables, and/or the EPS is suspended or diminished. Following any such disaster, Contractor shall reinstate the Services, the Deliverables, and the EPS in accordance with the applicable time frames set forth in the Business Continuity Plan.

15.2 Force Majeure. Subject to the terms of **Section 15.1** and the State's right to terminate the Contract for cause, if and to the extent a Party's performance of any of its obligations pursuant to the Contract is prevented, hindered or delayed by fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, or any other similar cause beyond the reasonable control of such Party, excluding events provided for in the Business Continuity Plan (each, a "**Force Majeure Event**"), then the non-performing, hindered or delayed Party shall be reasonably excused for such non-performance, hindrance or delay, as applicable, of those obligations affected by the Force Majeure Event for as long as such Force Majeure Event continues and such Party continues to use its best efforts to recommence performance whenever and to whatever extent possible without delay, including through the use of alternate sources, work-around plans or other means. The Party whose performance is prevented, hindered or delayed by a Force Majeure Event shall promptly notify the other Party of the occurrence of the Force Majeure Event and describe in reasonable detail (a) the nature of the Force Majeure Event, (b) anticipated impacts, if any, on Services, SLAs, schedules and payments, and (c) mitigation plans through the use of alternate resources, work-arounds and other means.

15.3 Contractor Obligations. The occurrence of a Force Majeure Event does not excuse, limit or otherwise affect Contractor's obligation to provide either normal recovery procedures or services required under the Business Continuity Plan only to the extent execution of the Business Continuity Plan is itself prevented by the Force Majeure Event.

15.4 No Payment for Unperformed Deliverables or Services. If Contractor fails to provide the Services or Deliverables in accordance with the Contract due to the occurrence of a Force Majeure Event, the Costs shall be adjusted in a manner such that the State is not responsible for the payment of any Costs for those Services and Services that Contractor fails to provide or which are degraded.

15.5 Allocation of Resources. Whenever a Force Majeure Event or a disaster causes Contractor to allocate limited resources between or among Contractor's customers, Contractor shall provide the State with priority over other customers in the receipt of such resources.

15.6 Business Continuity Plan for the State. Contractor shall assist the State in developing and implementing a disaster recovery and business continuity plan for the State (which is referred to as "IT service continuity and DR strategies, policies and procedures" in accordance with "**Appendix E-1, Consulting Services Requirements**" and "**Appendix E-2, Ongoing Services Requirements**").

15.7 Data Backup and Daily Feeds. Notwithstanding any other provision hereof and not by way of limitation of the provisions of "**Appendix E-2, Ongoing Services Requirements**," State shall have the right to establish backup security for State Information.

15.8 Data Recovery. In the event that any State Information is lost or corrupted (including any loss of integrity), or if Contractor fails to deliver State Information to any third party responsible for the storage of State Information in accordance with the governing backup procedures and there is no up-to-date replica or backup of such State Information from which such data and/or information can be replicated or restored, Contractor shall at its expense restore or correct, as applicable, the State Information, and pay for the State's costs associated with restoring or correcting the State Information.

15.9 Confidentiality Requirements. Contractor shall abide by all applicable federal and State confidentiality requirements, including, without limitation, providing at Contractor's expense all notices or other corrective or mitigating measures required by Law in the event of a breach of the security of the data for which breach Contractor is indirectly or directly responsible.

16. General Provisions.

16.1 Time is of the Essence. Time is of the essence with respect to Contractor's performance under the Contract. As used herein "**Time is of the essence**" shall be defined to mean that the Contractor will strictly adhere to the mutually agreed upon schedule and milestones for Services, Deliverables, and other Work Products, subject only to delays directly, and to the extent, caused by State that are not capable of cure.

16.2 Integration. The Contract, including the Annexes (which, for clarity, include the Accepted RFP, Offer, the Appendices, and the General Conditions and the NDA), constitutes the entire agreement of the Parties hereto with respect to its subject matter. The Contract supersedes any and all previous agreements between the Parties. There are no oral or written representations, agreements or understandings except as provided in the Contract.

16.3 Principles of Construction. Except where specifically stated otherwise, all references to Sections are to Sections in the Contract. The headings used in the Contract have been inserted for convenience of reference only and do not constitute a part of the Contract or define, expand or limit the provisions thereof. The words "hereof", "herein" and "hereunder" and words of similar import when used in the Contract shall refer to the Contract as a whole, including the Annexes, and not to any particular provision of the Contract. Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were used in another gender in all cases where they would so apply, and whenever any

words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply. The word "including" (and with correlative meaning "include") means "including but not limited to."

16.4 Sovereign Immunity. The State of Hawaii and DAGS do not waive sovereign immunity by entering into this Contract and specifically retain all immunities and defenses available to them as sovereigns pursuant to HRS chapters 661 and 662 and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Contract will not be strictly construed either against or for either party, except that any ambiguity as to sovereign immunity will be construed in favor of sovereign immunity.

17. Changes Initiated by Contractor.

17.1 Contractor must provide State with notice and a description of all Contractor-initiated changes to the EPS Services and EPS System, for any change that might affect or impact State; the notice must be 60 calendar days in advance when feasible and must include any known impacts the changes might have to State. If the change is determined by State to have an adverse impact when tested by State, Contractor shall not implement the change in the System without State's advance written consent. If the change is determined by State to have had an adverse impact after Contractor has implemented the change, Contractor shall, at no cost to State, promptly remove the change and/or correct the change which has had an adverse impact.

17.2 Except for emergencies, Contractor must notify State 60 calendar days prior to non-remedial changes to the EPS Services or EPS System. Contractor will provide an opportunity for State testing and analysis of State systems and procedures. Non-remedial changes with impact on State will be implemented at a time agreed upon with State.

17.3 Contractor shall absorb all costs associated with Contractor initiated changes to the EPS Services or EPS System.

SCHEDULE 1 TO EXHIBIT 6
LETTER OF CREDIT

Bank _____

[Month Date], 2016

Irrevocable Letter of Credit

Number: _____

Amount: US\$_____

To whom it may concern:

At the request and for the account of _____, Inc. we hereby establish our Irrevocable Letter of Credit Number _____ in your favor, available by draft(s) at sight on Bank _____, up to the aggregate sum of \$_____, inclusive of any banking charges effective as of today's date and expiring on [Month Date], 201_.

Partial drawings are permitted. Drafts drawn under this Letter of Credit must be accompanied by the following document:

A Certificate signed by a purportedly authorized representative of the State of Hawaii to the effect that the amount drawn represents funds due and payable to you because of the following reason:

- Nonperformance of the Contractor [Contractor Name] pursuant to Contract PSCXXXXX dated as of [Month Date], 201_ (the "Contract") for designing, developing, implementing, operating and maintaining the new EPS (as defined in the Contract), in whole and in part.
- Contractor has made an assignment for the benefit of creditors; or
- Contractor institutes or becomes subject to a liquidation or bankruptcy proceeding of any kind; or
- A receiver or similar officer has been appointed to take charge of all or part of Contractor's assets; or
- Contractor is acquired by or merges with another party, or there is otherwise a change in control (i.e., the ability, whether directly or indirectly, to direct the affairs of another by means of ownership, contract or otherwise) of Contractor to another party, including without limitation by asset or stock sale, merger, transfer of ownership, divestiture, spin-out, spin-off, or any other way; or
- Contractor terminates its maintenance and support services for State for the EPS Services or EPS System or breaches its support and maintenance obligations for State, whether due to its ceasing to conduct business generally or otherwise.

We hereby agree with the drawers, endorsers and holders in due course of any draft under this Letter of Credit that such drafts shall be duly honored on presentation provided that all terms and conditions of the Letter of Credit have been complied with.

This Letter of Credit is subject to the Uniform Customs and Practices for Documentary Credits (2007 Revision) International Chamber of Commerce Publication Number 600, as modified from time to time.

Yours faithfully,

For and on behalf of

Bank _____

By: _____

Title: _____

SCHEDULE 2 TO EXHIBIT 6

GUARANTY

In consideration of the execution by the _____ ("State") of the Contract dated _____, 201_ (the "Contract") with _____ ("Affiliate"), _____ Inc. ("Parent") unconditionally and irrevocably guarantees to the State, on the terms and conditions herein, the full and faithful performance by Affiliate of all of the obligations undertaken by Affiliate pursuant to the Contract and as it may hereafter be amended, modified, or extended from time to time, by change orders or otherwise.

If Affiliate fails or refuses to complete any of its obligations, Parent shall complete, or cause to be completed, the obligation that Affiliate failed or refused to complete, or be considered to be in breach of the Contract to the same extent as Affiliate, pursuant to the terms and conditions of the Contract.

Parent agrees that it shall not be necessary for the State, or its successors or assigns to exercise their rights against Affiliate, before proceeding to enforce their rights under this Guaranty. Parent waives: (a) notice of acceptance of this guaranty; (b) notice of any amendments, change orders, extensions of time for performance, changes in the work, or other acts by the State affecting Affiliate's rights or obligations under the Contract; (c) notice of any breach or claim of breach by Affiliate; and (d) the benefit of suretyship defenses generally.

Parent represents and warrants that the execution and delivery of, and performance of the obligations contained in this Guaranty have been authorized by all appropriate action and will not constitute a breach of or contravene any agreement or instrument to which Parent is a party, and that this Guaranty is a valid and binding obligation of Parent enforceable against Parent in accordance with its terms.

Notices to Parent shall be sent to the address set forth below.

_____, INC.

By: _____

Printed Name: _____

Title: _____

Address: _____

Date: _____

SCHEDULE 3 TO EXHIBIT 6
SOFTWARE ESCROW AGREEMENT

THIS SOFTWARE ESCROW AGREEMENT (the "Agreement") is made as of this ___ day of _____, 201_ (the "Effective Date"), among _____ ("ESCROW AGENT"), _____ ("LICENSOR" or "DEPOSITOR"), and _____ ("LICENSEE" or "BENEFICIARY") (hereafter, each a "Party" or collectively "Parties").

RECITALS

LICENSOR and LICENSEE have entered into a Contract dated _____ (the "Main Contract") to license certain Software (as defined in the Main Contract) (collectively, the "Software") upon specified terms and conditions; and

To assure the continued availability and usefulness of such Software, LICENSOR has agreed to establish and maintain in escrow with ESCROW AGENT the Software source code, object code, and certain documentation therefor.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. Deposit in Escrow.

1.1. Within 30 days of the Effective Date as defined in the Main Contract, LICENSOR shall deliver to ESCROW AGENT a sealed package containing the same current version of the Source Materials in Attachment 1, which is attached hereto and incorporated herein by this reference (collectively, the "Source Materials"). LICENSOR shall identify each item in said package and certify the completeness and accuracy of the Source Materials in a letter forwarding the same to ESCROW AGENT, with a copy of each letter to LICENSEE. Such package shall also indicate whether the Source Materials are owned by LICENSOR, one of its Contracting Assisting Entities (as defined in the Main Contract) or a COTS (as defined in the Main Contract) Software provider.

1.2. Escrow Agent will conduct a visual deposit inspection upon receipt of any Source Materials and associated Attachment 1 and provide notice by electronic mail, telephone, or regular mail to the Depositor and Beneficiary of all Source Materials that is accepted and deposited into the escrow account under this Agreement. If Escrow Agent determines that the Source Materials does not match the description provided by Depositor represented in Attachment 1 attached hereto, Escrow Agent will provide Depositor with notice by electronic mail, telephone, or regular mail of such discrepancies. Escrow Agent will work directly with the Depositor to resolve any such discrepancies prior to accepting Source Materials. OTHER THAN ESCROW AGENT'S INSPECTION OF THE SOURCE MATERIALS, AS DESCRIBED ABOVE, ESCROW AGENT SHALL HAVE NO OBLIGATION REGARDING THE ACCURACY, COMPLETENESS, FUNCTIONALITY, PERFORMANCE OR NONPERFORMANCE OF THE SOURCE MATERIALS.

1.3. LICENSOR shall deliver revisions of the Source Materials, including if available the Source Code for the Software, to ESCROW AGENT as and when corresponding revisions of the Software are made available to LICENSEE in accordance with the Main Contract. At such time as any modifications or revisions to the Source Materials are deposited with ESCROW AGENT, LICENSOR shall give written notice of such deposits to LICENSEE.

1.4. ESCROW AGENT shall acknowledge receipt of all revisions of or additions to the Source Materials by sending written acknowledgment (as provided in Section 1.3 above) thereof to both LICENSOR and LICENSEE within five calendar days of receipt.

1.5. Upon receipt of a new revision, ESCROW AGENT agrees to return to LICENSOR all such Source Materials from previous revisions as specified by LICENSOR in writing to ESCROW AGENT.

2. Release From Escrow.

2.1. ESCROW AGENT shall, within seven days following receipt of an affidavit, which is from an officer of LICENSEE to ESCROW AGENT sent via certified mail with return receipt requested, and which states that one of the following events has occurred, proceed in accordance with the procedure described in Sections 2.3 through 2.7 below if:

2.1.1. LICENSOR has made an assignment for the benefit of creditors; or

2.1.2. LICENSOR institutes or becomes subject to a liquidation or bankruptcy proceeding of any kind; or

2.1.3. A receiver or similar officer has been appointed to take charge of all or part of LICENSOR's assets; or

2.1.4. LICENSOR is acquired by or merges with another party, or there is otherwise a change in control (i.e., the ability, whether directly or indirectly, to direct the affairs of another by means of ownership, contract or otherwise) of Contractor to another party, including without limitation by asset or stock sale, merger, transfer of ownership, divestiture, spin-out, spin-off, or any other way; or

2.1.5. LICENSOR terminates its maintenance and support services for LICENSEE for the Software or breaches its support and maintenance obligations for the Software for LICENSEE, whether due to its ceasing to conduct business generally or otherwise.

2.1.6. LICENSOR, a COTS Software provider, or a Contractor Assisting Entity is adjudged insolvent or suffers execution of any legal or debt enforcement process over its assets; provided that in the event of any of the foregoing with respect to a Contractor Assisting Entity or a COTS Software provider, only the Source Materials with respect to the Contractor Assisting Entity, or the COTS Software provider shall be released;

2.1.7. LICENSEE has the right to terminate the Main Contract for convenience pursuant to **Exhibit 5, State Attorney General (AG) General Conditions**, and for breach (which for the avoidance of doubt shall include, LICENSOR's failure to meet any requirements, timetables, milestones or other requirements herein or in the contract, including, for the further avoidance of doubt, in any Annex) in accordance with its terms, whether or not it has done so;

2.1.8. LICENSOR refuses to do, or does not perform, any reasonable requests by LICENSEE for changes, modifications and/or revisions to the Software in accordance with the terms hereof or the Main Contract; or

2.1.9. LICENSOR's proposed or actual charges associated with any reasonable requests by LICENSEE for changes, modifications and/or revisions to the Software are in excess of industry standard costs. Industry standard costs shall be determined by multiple bids (to the extent feasible) for requested work with reputable and established production companies, or by other commercially reasonable standards are not practical; and/or

2.1.10. LICENSOR's Services or Deliverables, including delivery times as reasonably requested by LICENSEE, do not meet or will not meet commercially reasonable industry standards.

2.2 LICENSEE shall send a copy of the affidavit to LICENSOR via certified mail with return receipt requested, simultaneously with its affidavit to ESCROW AGENT. Upon its receipt of the affidavit as provided above in Section 2.1, ESCROW AGENT shall immediately give written notice to LICENSOR, attaching a copy of the affidavit to the notice, via commercial express mail.

2.3 Upon receipt of such notices in accordance with Sections 2.1 and 2.2, LICENSOR shall have 30 calendar days to review LICENSEE's affidavit requesting release from escrow as provided for in Section 2.1 above.

2.4 If LICENSOR does not give notice to ESCROW AGENT within the 30 calendar days provided in Section 2.3 that LICENSEE's request for release from escrow is contested by LICENSOR, ESCROW AGENT shall automatically release the Source Materials to LICENSEE. The Source Materials shall be used by LICENSEE subject to the Main Contract and solely for support and maintenance for the Software within the provisions of the Main Contract. Delivery of the Source Materials to LICENSEE in accordance with provisions hereof shall automatically terminate this Escrow Agreement.

2.5 If LICENSOR does give ESCROW AGENT notice within the 30 days provided in Section 2.3 that LICENSEE's request for release from escrow is contested by LICENSOR, ESCROW AGENT shall retain the Source Materials in escrow while LICENSOR and LICENSEE either:

2.5.1 Settle the dispute among themselves and jointly give notice to ESCROW AGENT in writing of the result; or

2.5.2 Submit the dispute to litigation for resolution in accordance with the terms of this Agreement.

2.6 In the event of litigation, ESCROW AGENT shall dispose of the Source Materials as directed by the court of competent jurisdiction's finding given in writing to all parties.

2.7 Each party shall bear its own costs incurred in any litigation as set forth in Section 2.5 above

3. Ownership of Source Material.

3.1 The tangible medium comprising the escrowed Source Materials, but not the source code or technical specifications and other information embodied in such tangible media, shall be in the possession of ESCROW AGENT as soon as such material is received by

ESCROW AGENT and at all times until the Source Materials are returned to LICENSOR or to LICENSEE as outlined in Section 2 above.

3.2 ESCROW AGENT, LICENSOR, and LICENSEE recognize and acknowledge that ownership of the source code itself shall remain the sole and exclusive proprietary property of LICENSOR at all times and that nothing in this Agreement shall be interpreted to deprive LICENSOR of any right, title or interest in or to the Source Materials.

3.3 It is expressly understood and agreed that LICENSEE's right to obtain the source code and other documentation from escrow is subject to the terms described in Section 8 of the Main Contract and that LICENSEE shall have no right or claim to LICENSOR's proprietary rights in the Software.

4. Storage and Security.

4.1 ESCROW AGENT will act as custodian of the Source Materials until the escrow is terminated. ESCROW AGENT shall establish, under its control, a secure receptacle for the purpose of storing the Source Materials.

4.2 The Source Materials deposited with ESCROW AGENT by LICENSOR pursuant to this Escrow Agreement shall remain the exclusive property of the LICENSOR, except as otherwise provided in Section 2.

4.3 Except as provided in this Agreement, ESCROW AGENT agrees that:

4.3.1 It shall not divulge, disclose or otherwise make available to any parties other than LICENSOR or LICENSEE, or make any use whatsoever, of the Source Materials;

4.3.2 It shall not permit any person access to the Source Materials, except as may be necessary for ESCROW AGENT's authorized representatives to perform its functions under this Agreement;

4.3.3 Access to the Source Materials by LICENSOR shall be granted by ESCROW AGENT only to those persons duly authorized in writing by a competent officer of LICENSOR or as provided herein; and

4.3.4 Access to the Source Materials shall not be granted without compliance with all security and identification procedures instituted by ESCROW AGENT.

4.4 ESCROW AGENT shall, upon LICENSEE's request and in accordance with Section 1.2, verify or determine that the Source Materials deposited with ESCROW AGENT by LICENSOR do, in fact, consist of those items which LICENSOR is obligated to deliver under any agreement.

4.5 ESCROW AGENT shall accept, store and deliver the Source Materials deposited with it by LICENSOR, in accordance with the terms and conditions of this Agreement.

4.6 If any of the Source Materials held in escrow by ESCROW AGENT shall be attached, garnished or levied upon pursuant to an order of court, or the delivery thereof shall be stayed or enjoined by an order of court, or any other order, judgment or decree shall be made or entered by any court affecting the Source Materials or any part thereof of any act of ESCROW AGENT, ESCROW AGENT is hereby expressly authorized in its sole discretion to obey and comply with all orders, judgments or decrees so entered or issued by any court,

without the necessity of inquiring whether such court had jurisdiction, and in case ESCROW AGENT obeys or complies with any such order, judgment or decree, ESCROW AGENT shall not be liable to LICENSEE, LICENSOR or any third party by reason of such compliance, notwithstanding that such order, judgment or decree may subsequently be reversed, modified or vacated.

5. Termination.

5.1 The initial term of this Agreement is for a period of one year. Thereafter, this Agreement shall automatically renew from year to year unless (a) LICENSOR and LICENSEE jointly instruct ESCROW AGENT in writing that the Agreement is terminated; or (b) ESCROW AGENT instructs LICENSOR and LICENSEE in writing after its renewal date that the Agreement is terminated for nonpayment in accordance with Section 5.2. ESCROW AGENT reserves the right to terminate this Agreement, for any reason, other than for nonpayment, by providing LICENSOR and LICENSEE 90 calendar days' written notice of its intent to terminate this Agreement. Upon ESCROW AGENT's receipt of LICENSEE's (or LICENSOR's, if LICENSOR is paying ESCROW AGENT's fees) request for a refund, ESCROW AGENT shall refund the pro rata portion of the annual renewal fee attributable to the period from the date of such termination by resignation to the next successive anniversary date. If the Source Materials are subject to another escrow agreement with ESCROW AGENT, ESCROW AGENT reserves the right, after the initial one year term, to adjust the anniversary date of this Agreement to match the then prevailing anniversary date of such other escrow arrangements. This Agreement may also be terminated in accordance with the terms of Section 2.

5.2 In the event of the nonpayment of fees owed to ESCROW AGENT, ESCROW AGENT shall provide written notice of delinquency to all Parties to this Agreement. Any Party to this Agreement shall have the right to make the payment to ESCROW AGENT to cure the default. If the past due payment is not received in full by ESCROW AGENT within one (1) month of the date of such notice, then ESCROW AGENT shall have the right to terminate this Agreement at any time thereafter by sending written notice of termination to all Parties. ESCROW AGENT shall have no obligation to take any action under this Agreement so long as any payment due to ESCROW AGENT remains unpaid.

5.3 LICENSEE and LICENSOR may terminate this Agreement by mutual written agreement, giving 60 calendar days' notice to ESCROW AGENT.

5.4. Good Faith Reliance. ESCROW AGENT shall act in good faith reliance upon any instruction, instrument, or signature believed in good faith to be genuine and may assume that any person purported to give any writing, notice, respect, advice, or instruction in connection with or relating to this Agreement has been duly authorized to do so.

6. Indemnification.

6.1 LICENSOR and ESCROW AGENT shall defend, indemnify and hold harmless the other, its corporate affiliates and its officers, directors, employees, and agents and its successors and assigns from and against any and all claims, losses, liabilities, damages, and expenses (including, without limitation, reasonable attorneys' fees), arising under this Agreement from the negligent or intentional acts or omissions of the indemnifying party or its subcontractors, or the officers, directors, employees, agents, successors and assigns of any of them.

6.2 If there is a claim brought against ESCROW AGENT that the Source Materials infringes intellectual property rights or any other rights of a third party and such claim includes a threat of liability for ESCROW AGENT (as reasonably determined by ESCROW AGENT) in the event of release of the Source Materials by ESCROW AGENT to Beneficiary (an "IP Infringement Claim"), then ESCROW AGENT shall notify Beneficiary of same, and Beneficiary shall release ESCROW AGENT from its obligation to provide to Beneficiary the Source Materials as set forth in this Agreement pending resolution of such IP Infringement Claim, except that ESCROW AGENT shall comply with the order of a court of competent jurisdiction to release the Source Materials.

7. Fees.

7.1 ESCROW AGENT is entitled to be paid its standard fees and expenses applicable to the services provided. LICENSOR shall pay the ESCROW AGENT's fees and expenses. ESCROW AGENT shall notify LICENSOR at least 60 calendar days prior to any increase in fees.

7.2 ESCROW AGENT shall not be required to perform any service, including release of any Source Materials under Article 2, unless the payment for such service and any outstanding balances owed to ESCROW AGENT are paid in full. Initial fees are due upon receipt of a signed contract or receipt of the Source Materials whichever is earliest. Payments on all renewal and services invoices are due net 30 calendar days from date of invoice. If invoiced fees are not paid, ESCROW AGENT may terminate this Agreement in accordance with Section 5.2. Any service fees not collected by ESCROW AGENT when due shall bear interest until paid at a rate of 1% per month (12% per annum) or the maximum rate permitted by law, whichever is less. Delinquent accounts may be referred to a collection agency at the sole discretion of ESCROW AGENT.

8. Entire Agreement. As between LICENSOR and LICENSEE this Agreement incorporates by reference specific sections of or definitions from the Main Contract. With respect to ESCROW AGENT, this Agreement constitutes the entire Agreement among the parties, including the subject matter hereof and shall supersede all previous communications, representations, understandings and agreements, either oral or written between the parties. This Escrow Agreement is intended to be and shall be treated as an agreement separate and distinct from the Main Contract.
9. Notice. All notices regarding Section 2 shall be sent by commercial express mail. All other correspondence, including invoices, payments, and other documents and communications, shall be sent by certified, registered or regular mail to the Parties at the addresses specified on another Exhibit (if any) which shall include the individual(s) authorized to receive notices. It shall be the responsibility of the Parties to notify each other as provided in this Section in the event of a change of physical or e-mail addresses. Any Party shall have the right to rely on the last known address of the other Parties. Any correctly addressed notice or last known address of the other Parties that is relied on herein that is refused, unclaimed, or undeliverable because of an act or omission of the Party to be notified as provided herein shall be deemed effective as of the first date that said notice was refused, unclaimed, the postal authorities by mail, through messenger or commercial express delivery services.

10. Governing Law. This Agreement shall be governed by and construed according to the laws of the State of Hawaii. LICENSOR and ESCROW AGENT consent to personal jurisdiction in that State. The exclusive venue of any action hereunder shall be in the Honolulu, Hawaii.
11. Severability. In the event any of the provisions of this Agreement shall be held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.
12. Headings. The headings in this Agreement do not form a part of it, but are for convenience only and shall not limit or affect the meaning of the provisions.
13. Main Contract Terms. Capitalized terms not defined in this Agreement shall have the meanings provided in the Main Contract. However, to the extent this Agreement is in conflict with the Main Contract, the terms of this Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement as of the Effective Date.

LICENSEE -

Name: _____

Title: _____

Date: _____

Notice Address: _____

Attn: _____

Facsimile No.: _____

LICENSOR –

Name: _____

Title: _____

Date: _____

Notice Address: _____

Attn: _____

Facsimile No.: _____

ESCROW AGENT -

By: _____

Printed Name: _____

Title: _____

Date: _____

ATTACHMENT 1
TO SOFTWARE ESCROW AGREEMENT
SOURCE MATERIALS

Depositor/LICENSOR represents to Beneficiary/LICENSEE that Source Materials delivered to ESCROW AGENT shall consist of the following:

The Source Materials include, for the Custom Software, Pre-Existing Software, COTS Software, and other Contractor Technology for LICENSOR, its COTS Software licensors, and its Contracting Assisting Entities, the Source Code Form for the Software, the object code for the Software, and all relevant commentary, explanations, and other documentation of the Software, including but not limited to:

- Functional specifications (which describe the function of a Software module from a user point of view in detail) and Software designs for the software, including but not limited to background and detailed instructions for a programmer, the database schema, entity relationship diagrams (where applicable), data objects, and user interface objects. In the case of data interfaces, which have limited user interfaces, it also includes a description of how the overall interface will work on a technical level, the content and format of protocols streams, and shaking considerations. This documentation will also include information describing how to compile and link the source modules to obtain working software, as well as data structures outside of the module which are required to configure or drive the module.
- Source code and documentation for database definition and database procedures (SQL definitions), graphical user interface modules, data interface modules and other Software modules, including but not limited to build procedures.
- Deliverable installation media of current product release, product upgrade media for upgrades issued within three years of each escrow deposit.
- Quality assurance tools, including but not limited to test suites.
- Manuals and training manuals.
- Software installation and support policies and procedures.
- The platform on which the Software operates, including but not limited to hardware, operating system, utilities, and network connectivity.
- The compiler components for the Software.

