

**GENERAL CONDITIONS TO
THE CONTRACT**

BETWEEN

**THE STATE OF HAWAII,
DEPARTMENT OF HUMAN SERVICES**

AND

CONTRACTOR

TABLE OF CONTENTS

1.	DEFINITIONS.....	1
2.	TERM.	11
3.	FINANCIAL MATTERS.	11
3.1	Charges.	11
3.2	Maximum Amount and Costs.	12
3.3	Transportation and Insurance Charges.....	13
3.4	Taxes.	13
3.5	Contractor Expenses.	14
3.6	Invoices.	14
3.7	Funding.	16
3.8	Most Favored Customer.....	17
3.9	Overpayments or Erroneous Payments.....	17
3.10	Advance Payments Prohibited.	17
3.11	Credits.	17
3.12	Use of Funds.	17
3.13	Interest.....	17
3.14	Billing Limitations.....	17
3.15	Retainage.....	17
3.16	Cost or Pricing Data.....	18
4.	PROJECT MANAGEMENT.....	18
4.1	Reports and Meetings.	18
4.2	Contractor Project Manager.....	19
4.3	Contractor Staff.....	20
4.4	State Project Manager.	21
4.5	Employment of State Personnel.....	21
4.6	Reference and Background Checks.	22
4.7	Records Retention and Access Requirements.....	22
4.8	Accounting Requirements.....	23
4.9	Supplemental Contracts.	23
4.10	Audit Reports.	23
4.11	Quality Control.	24
4.12	Coordination of Services by the State.....	24
4.13	Wages, Hours, and Working Conditions.	24
5.	SERVICES AND RESOURCES.....	24
5.1	Performance.	24
5.2	Necessary Resources.....	24
5.3	Ownership.	25
5.4	Use of Property.	25
5.5	Damage to Property.	25
5.6	Notice of Damage.	25
5.7	Surrender of Property.....	25
5.8	State Property and Facility.....	25
5.9	Application of Best Practices.....	25

6.	EQUIPMENT AND THIRD-PARTY SOFTWARE.....	25
7.	SERVICES AND DELIVERABLES.	26
7.1	General.	26
7.2	Work Plan.	26
7.3	Testing and Acceptance Process.	27
7.4	Protection from Damage.	28
7.5	Delivery.....	29
7.6	Interpretation of Deliverables.	29
7.7	Representation.....	29
7.8	Source Code.	29
7.9	Knowledge Transfer.....	29
8.	LICENSES.....	29
8.1	Grants to the State.	29
8.2	Federal Government Agencies.....	30
8.3	Title.	30
8.4	Documentation.	30
8.5	Copies.	30
8.6	Restrictions.	30
8.7	Versions.	31
9.	STATE OWNERSHIP.....	31
9.1	Ownership Rights and Copyrights.	31
9.2	Software, State Property and Other Work Products	31
9.3	Transfer of Ownership by Contractor	31
9.4	Restrictions.	31
9.5	Data.	31
9.6	Notices.	32
10.	IMPLEMENTATION AND FEDERAL CERTIFICATION.....	32
10.1	Implementation.	32
10.2	Training.....	32
10.3	Conversion.	32
10.4	Federal Certification	33
11.	ADDITIONAL STATE STANDARD PROVISIONS.....	33
11.1	Certificates.	33
11.2	Rights Reserved.	34
12.	WARRANTIES.	34
12.1	Deliverables, Functions, Releases, Services and System.	34
12.2	Intellectual Property Rights.	36
12.3	Date/Time Compliance Warranty.	36
12.4	Unauthorized Code and Self-Help Code.....	37
12.5	Power and Authority.....	37
12.6	Registration.	37
12.7	Written Commitments.....	37
12.8	Legal and Regulatory Compliance.....	37
12.9	Compatibility.	38

12.10	Authorization.	38
12.11	Ability to Perform.	39
12.12	Non-Obsolescence.	39
12.13	Performance Standards.	39
12.14	DISCLAIMERS.	40
13.	WARRANTY SERVICES AND MAINTENANCE SERVICES.	40
13.1	General Responsibilities.	40
13.2	Specific Warranty Services Obligations.	40
13.3	Inquiry and Assistance.	41
13.4	Database.	41
13.5	Enhancements.	41
13.6	Deficiency Reports.	42
13.7	Continuous Improvement.	42
13.8	Performance Standards.	43
14.	DISPUTE RESOLUTION PROCESS.	43
14.1	Disputes.	43
14.2	Rights and Remedies.	43
15.	CHANGES.	43
15.1	Changing Government Programs and Services.	43
15.2	Identifying Changes.	44
15.3	Issuance of Change Requests.	44
15.4	Contractor Response to Changes and Change Requests.	44
15.5	Modifications of Contract.	44
15.6	Change Orders.	45
15.7	Termination.	46
15.8	Changes Initiated by Contractor.	46
15.9	Update Documents.	46
15.10	Pricing for Change Requests.	47
15.11	State Guidance.	47
16.	GUARANTY.	47
16.1	Submission.	47
16.2	Failure to Comply.	47
17.	ADDITIONAL RIGHTS AND REMEDIES.	48
17.1	Liquidated Damages.	48
17.2	Withholding Payments.	48
17.3	Reductions in Payments Due.	48
17.4	Re-Execution of Work.	49
17.5	Performance Standards.	49
17.6	Suspension of Contract.	49
17.7	Right to Assurance.	50
17.8	Corrective Action Plans.	50
17.9	Letter of Credit.	51
18.	INSURANCE.	51
18.1	Liability and Auto Insurance.	51

18.2	Worker’s Compensation/Employers Liability Coverage.....	52
18.3	Subcontractors.....	53
18.4	Premiums.	53
18.5	Expiration or Cancellation.	53
18.6	Insurance Documents.....	53
18.7	Increased Coverage.....	54
18.8	Cross Liability-.	54
18.9	General.....	54
18.10	Subrogation.....	54
18.11	Extended Coverage.....	54
18.12	Employees and Volunteers.	54
19.	DATA AND INFORMATION SECURITY.....	54
19.1	General Requirements.....	54
19.2	Confidential Information and Proprietary Information Protection Obligations. ...	56
19.3	Personal Information Protection Obligations.....	58
19.4	Beneficiary Protection Obligations.....	59
19.5	Security Requirements.....	59
20.	INDEMNIFICATIONS.....	59
20.1	Intellectual Property.....	59
20.2	General.....	60
21.	DAMAGES LIMITATIONS.....	61
21.1	State’s Limitation of Liability.....	61
22.	TERMINATION.....	61
22.1	Termination for Contractor’s Default.....	61
22.2	Termination for Rejection of Deliverables.	62
22.3	Termination for Conflict of Interest.....	62
22.4	Termination Remedies.....	62
22.5	Termination for Convenience.....	63
22.6	Termination for Withdrawal of Authority.....	65
22.7	Termination for Non-allocation of Funds.....	65
22.8	Termination for Bankruptcy or Insolvency.....	65
22.9	Termination and Expiration Procedure.....	65
23.	OTHER CONDITIONS.....	67
23.1	Antitrust Claims.....	67
23.2	Assignment.....	67
23.3	Attorneys’ Fees and Costs.....	68
23.4	Authority.....	68
23.5	Binding Effect.....	68
23.6	Claims Based on the State Procurement Officer’s Actions or Omissions.....	68
23.7	Compliance With Civil Rights Laws.....	69
23.8	Compliance with Health and Safety Related Laws.....	70
23.9	Conflicts Between Contract and Procurement Rules; Conflict Between Documents; Order of Precedence.....	70
23.10	Conflicts of Interest.....	71

23.11	Contingent Fees, Gifts, and Gratuities.....	71
23.12	Contractor Certification Regarding Ethics.....	72
23.13	Contractor Commitments, Warranties, and Representations.....	72
23.14	Cooperation.....	72
23.15	Counterparts.....	72
23.16	Debarment and Suspension.....	72
23.17	Drug-Free Workplace.	73
23.18	Entire Agreement; Acknowledgement of Understanding.....	73
23.19	Force Majeure.	73
23.20	Governing Law.	73
23.21	Headings.	73
23.22	Independent Status of Contractor.....	73
23.23	Legal Compliance.	74
23.24	Lobbying Activities and Campaign Contributions.	74
23.25	Notice of Delay.	74
23.26	Notices.	74
23.27	Pollution Control.....	75
23.28	Publicity.	75
23.29	Remedies.....	75
23.30	Severability.	75
23.31	Sovereign Immunity.....	75
23.32	Subcontractors.....	75
23.33	Subpoena.....	77
23.34	Survival.	78
23.35	UCC Applicability.	78
23.36	Waiver.....	78
EXHIBIT A. CHARGES, PAYMENTS, DELIVERABLES AND STANDARDS		1
EXHIBIT B. PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES		1
EXHIBIT C. GUARANTY		1
EXHIBIT D. LETTER OF CREDIT		1

GENERAL CONDITIONS TO THE CONTRACT

1. Definitions.

The following terms as used throughout this Contract shall have the meanings as set forth below.

“Acceptance”: Provision of a Deliverable Acceptance Document signed by the State representative, who is designated in writing by State to have such authority, and provided to Contractor to indicate that a Deliverable or Service has conformed to its applicable Acceptance Criteria in accordance with the process described in Section 7.3.1. Also referred to as approval in the RFP.

“Acceptance Criteria”: The Specifications against which each Deliverable and Service shall be evaluated in accordance with Section 7.3, and the Performance Standards, warranties, and other requirements described in this Contract, DEDs, and any subsequent amendments and Change Orders, and State’s satisfaction for Services which are not subsumed in a Deliverable.

“Acceptance Tests”: The tests or reviews that are performed by State to determine there are no Deficiencies in the Services or Deliverables that must be satisfied before Acceptance can occur as set forth in Section 7.3, including without limitation User Acceptance Tests on the System.

“ACF”: The Administration for Children and Families. The division of the Federal Department of Health & Human Services that promotes the economic and social wellbeing of children, families, and individuals.

“Application Systems Integration” or “ASI”: Design, development, Implementation, and Deployment.

“Assignee”: An assignee or transferee, as described below in Section 23.2.

“Availability”: The time that the System, 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 Exhibit B.

“BAFO(s)”: Contractor's best and final offer(s) in response to the RFP, dated _____.

“Beneficiary Information”: Information and data concerning applicants, enrollees or members of any Department of Human Services Program.

“Business Days”: Monday through Friday, 7:45am to 4:30pm Hawaii Standard Time, except for holidays observed by the State of Hawaii and emergency conditions as determined by the State.

“CCWIS”: Comprehensive Child Welfare Information System. Also referred to as the “System” in the RFP, Response and these General Conditions.

“Certification”: ACF’s written confirmation that the System and Services meet Federal requirements.

“Change Order”: A written form, in response to a Change Request that modifies, deletes or adds to the Deliverables or Services, in whole or in part, or a written order signed by the State procurement officer as described in Section 15. Also known as a request for modification.

“Change Request”: A written form used to request that the Contractor modify, delete or add to the Deliverables or Services, in whole or in part, and made in accordance with the terms of Section 15, including but not limited to a request for information.

“Charges”: The amount(s) to be paid for Services and Deliverables under this Contract, in whole or in part, as described in Exhibit A and any subsequent written amendments or Change Orders.

“Confidential Information”: Various trade secrets and information of each party that either Contractor or State desires to protect against unrestricted disclosure including without limitation State non-publicly available Data, non-public Specifications, the Contractor’s Software, State security data, any non-public information or documentation concerning either party’s business or future products or plans that are learned by the other party during the performance of this Contract, and information that is designated as confidential by the disclosing party and, subject to Section 19.2, that may be exempt from disclosure to the public or other unauthorized persons under either chapters 92F and 346, HRS, or other State or Federal statutes and regulations.

“Configuration(s)”: The setting up of rules and workflow processes to be used to implement the specific business rules, workflow, and related metadata of State, without utilizing programming language or database queries, and the entering of data into tables that a software “rules engine” will process to determine workflow sequences, value limitation, and other variables, all without altering the Software Source Code.

“Confirmation”: 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 pre-tested the System through System Testing for compliance with the Specifications; and confirmed the Deliverable, including but not limited to the System, is ready for applicable Acceptance Tests.

“Contract”: The terms and conditions, all attachments to this Contract, and documents incorporated into this Contract by this reference, the RFP, and the Response.

“Contractor”: The selected Vendor performing Services pursuant to this Contract, including the Contractor’s owners, members, officers, directors, partners, employees, agents, and representatives.

“Contractor Project Manager”: The employee chosen by Contractor with Project management responsibilities for Contractor, as described in Section 4.2.

“Contractor Technology”: Intellectual property owned by Contractor prior to the Effective Date or developed and owned by Contractor outside the scope of this Contract (including modifications, enhancements or improvements thereto that are not paid for with State or Federal funding), including: Contractor’s proprietary methodologies, project management and other tools, deliverable examples, procedures, processes, techniques, data models, templates, general purpose consulting and software tools, utilities, and routines; the Proprietary Software; and Contractor’s Proprietary Information.

“Control”: The ability, whether directly or indirectly, to direct the affairs of another by means of ownership, contract or otherwise.

“Conversion”: The Services performed for converting historical and other Data for Processing by the System and Services as described in the RFP, the Response, and the Conversion Plan Deliverables.

“Converted Data”: The Data which has been successfully converted by Contractor for Processing by the System, a Deliverable.

“Corrective Action Plan”: The detailed written plan that Contractor submits to the State in response to the State’s demand that Contractor describes how it will correct or resolve a Deficiency or breach by Contractor.

“Custom Software”: Software, including without limitation Interfaces, designed, developed or produced by Contractor under the Contract, but excluding Proprietary Software.

“Data”: State’s records, files, forms, data, metadata, and other documents, including but not limited to Converted Data, if any.

“Date/Time Compliance Warranty”: The warranty provided in Section 12.3.

“day(s)” or “Day(s)”: Calendar day(s), unless otherwise indicated.

“DED(s)”: Deliverable expectation documents, i.e., documents that describe Acceptance Criteria for each Deliverable and Service subject to Acceptance Tests. Each DED is a Deliverable.

“Deficiency”: A failure, omission, or defect in a Service or Deliverable, which causes it not to conform to its Specifications, or a failure to conform to reasonable commercial or industry standards for appearance, quality, functionality, or format. Also referred to as a defect, issue, incident, problem, error, or similar term in the RFP.

“Deliverable Acceptance Document”: The form that the State will use, approve, and sign to provide Acceptance of a Deliverable or Services to Contractor.

“Deliverables”: Contractor’s products which are produced and/or prepared for State (either independently or in concert with State or third Party) during the course of Contractor’s performance under this Contract, including without limitation Deliverables which are described in Exhibit A of these General Conditions, the RFP, the Response, the System in whole or in part,

and Functions, Releases and Enhancements; products provided by Contractor under the Work Plan and Change Orders, including but not limited to Custom Software, Documentation, Hosting Services, Enhancements, and Reports; and all designs, structures, and models developed in the course of rendering the Services and incorporated into such Deliverables.

“Delivery Date(s)”: The dates described in the Work Plan for the delivery of the Deliverables and Services to State.

“Deployment”: The process for installing the fully Operational System and thereafter to all applicable State Sites or moving the System from one location or environment to another during the term of this Contract. Also referred to as Roll-out in the RFP and Response.

“Dispute Resolution”: The process for resolving disputes as described in Section 14.

“Documentation”: All service and operations reports, technical and User manuals used in conjunction with the System, Services and/or Deliverables, in whole and in part, including without limitation manuals provided by licensors of any Third-Party Software.

“Effective Date”: The date of execution of this Contract by all Party

“Enhancements”: All updates, upgrades, additions, and changes to future and new releases for the System, in whole or in part.

“Equipment”: The computer hardware on which the System shall operate following its delivery, all operating system software for use with the Equipment, Facilities, and other telecommunications services (if any) as listed in the Response and RFP, and any amendments thereto and in Change Orders.

“Executable Code”: The version of the Software which is generated by an assembler from the Object Code of the Software, and which will be installed and operated on the Equipment.

“Facilities”: The telecommunications lines, trunks, cables, fibers, and other media and equipment used for voice, data, video, and fax transmissions.

“Final System Acceptance”: Acceptance of the System that has successfully completed Implementation and Deployment throughout the State in accordance with its applicable requirements.

“Functional and System Design Document”: The Deliverable containing the detailed design for the System. The Deliverable will include but not be limited to the user interface designs, detailed design Specifications for each Software module inclusive of purpose, logical flow, Configurations, inputs, outputs, Interfaces, and unit test conditions. The Deliverable shall also include the physical database design based on detailed design Specifications, Software module designs and associated planned test conditions, and the design for the System to meet Performance Standards.

“Function(s)”: A discrete capability or function of the Software, Equipment, Facilities, or a Service as described in the RFP, Response, and Documentation. Also referred to as modules in the RFP and Response.

“Go-Live”: The event(s) that occurs after Acceptance of each Release, after State makes a Go/No Go decision, and when State decides to put each Release, including the entire System and Services, into Production. Also referred to in the RFP as Cutover.

“Go/No Go”: The event(s) that occurs when State decides to initiate the Go-Live for each Release and Services.

“HAR”: Hawaii Administrative Rules.

“HOPA”: The head of the purchasing agency, which term includes the designee of the HOPA.

“Hosting Services”: The Services that the Contractor provides for management and operation of the Contractor or a Subcontractor’s Equipment for Processing the Data using the System and for transmitting the Data between Contractor or a Subcontractor’s Equipment, other systems, and State’s Sites and Users.

“HRS”: Hawaii Revised Statutes.

“Implementation”: The process for making the System fully Operational for Processing the Data in State’s normal business operations.

“Interfaces”: Custom Software that is developed by Contractor for transmitting Data between the System and other systems, as described in the RFP and Response.

“Letter of Credit”: A letter of credit securing Contractor’s performance of its Contract obligations and other potential liabilities to State from the Effective Date until one year following Final System Acceptance, as described in Section 17.9 and in Exhibit D.

“Maintenance”: Maintenance and support Services which will be performed by Contractor following the Warranty Period for each Deliverable, each Function, each Release, Services, and the System, in whole and in part, including but not limited to Functions, Releases and other Deliverables and Services that previously received Acceptance and that are integrated into the System and which are described as such in the RFP, the Response, and Section 13 below. Also referred to as Maintenance and Operations (M&O) in the RFP.

“Maximum Amount”: The maximum amount payable by State to Contractor under this Contract as indicated in the attached Compensation and Payment attachment. Also referred to as the Firm Fixed Price in the RFP.

“Notice”: A written document given by a party to the other in accordance with Section 23.26 of these General Conditions. Notice may also include electronic mail messages between State and Contractor personnel relevant to the Contract unless otherwise specified in Section 23.26 of these General Conditions or pursuant to relevant federal or state laws.

“Object Code”: The binary code version of Source Code that has been processed by a compiler.

“Obsolete” (and any variations thereof): A Software, Equipment, Facilities, and/or other Contractor Technology product or Service that will no longer receive maintenance and support, beginning as of the effective date of an end-of service life announcement from the manufacturer or licensor with respect to a product. If no such announcement is published, then the Software, Equipment, Facilities, and/or Contractor Technology product or Service will be deemed Obsolete as of the earlier of (i) the date the manufacturer or licensor no longer maintains or supports the product or (ii) the date the manufacturer or licensor no longer includes it as part of its product and/or service offerings made generally available to its customers.

“Operational”: The condition when the System, in whole and in part, is functional in accordance with applicable Specifications and usable for its purposes in the daily operations of providing the System; including but not limited to correctly processing all eligibility transactions (financial and other transactions), maintaining all System files, producing all required Reports, supporting designated Interfaces, and performing all responsibilities specified in the Contract for the Maintenance and Operations of the Solution.

“Operation(s)”: Services that are performed by Contractor on the System, in whole and in part, and that are described in RFP and the Response, and in the Performance Standards.

“Party”: Each of the Contractor and the State.

“Payment Events”: A scheduled cyclical payment set by DHS for a vendor to submit a request for payment for review and approval. A payment event includes all deliverables eligible for payment. Deliverables eligible for payment are those deliverables that have been approved by DHS and have not yet been submitted for approval.

“Performance Standards”: The standards to which the System and other Services provided by Contractor shall perform as required by this Contract and any succeeding amendments thereto, as described in the RFP, Exhibit B of these General Conditions, and as otherwise agreed to by the parties in writing. Also referred to as Service Level Requirements, Key Performance Indicators, KPIs, SLAs, and Service Level Agreements in the RFP.

“Personal information” or “personal information”: 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.

“Processing”: The performance by the Software residing on the Equipment of logical operations and calculations on the Data.

“Production”: Actual use of a Release, the System, and Services after Go Live by State in State’s performance of its regular business operations.

“Project”: The ASI of the Solution.

“Property”: All State Equipment, State Confidential Information, State Proprietary Information, Deliverables, and other State real and personal property.

“Proprietary Information”: (i) With respect to Contractor, the Contractor Technology; (ii) information that either party clearly identifies as its proprietary information excluding, any part of the Proprietary Information which: (a) is or becomes publicly available through no act or failure of the other party unless such party’s act or failure is a breach of a confidentiality obligation applicable to the information; (b) was or is rightfully acquired by the other party from a source other than the disclosing party prior to receipt from the disclosing party; (c) becomes independently available to the other party as a matter of right; (d) was previously known and rightfully acquired at the time received from the other party; (e) is developed by one party independently of any disclosures made by the other party of such information; or (f) is disclosed by a party pursuant to subpoena or other legal process, and which as a result becomes lawfully obtainable by the general public.

“Proprietary Software”: All computer programs which were developed and owned by Contractor or Subcontractors prior to the Effective Date or which are developed during the term by Contractor Staff in performing work that is not for this Contract and any modifications thereof, and derivative works based thereon that are not paid for with Federal or State funding, and the documentation used to describe, maintain, and use such Proprietary Software.

“Purchasing agency”: 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.

“Release”: The combination of Functions described as a Release in the RFP, Response, applicable Deliverables, and the Work Plan, including but not limited to all Releases which are integrated into the System.

“Report(s)”: Documents provided by Contractor to State regarding the System activities, events, performance, Services, and Deliverables.

“Response”: Contractor’s response to the RFP dated _____, as amended, the BAFO(s), and any subsequent information provided by Contractor pursuant to this Contract. Also referred to as the Proposal in the Contract, including the RFP.

“Retainage”: The payment amounts held back by State from each Deliverable’s Charges.

“RFP”: RFP-xxx-###-##-##-S, dated _____ and all addenda thereto which are incorporated into the RFP.

“SaaS”: The acronym for “Software as a service”, i.e., a combination of Software, Equipment, Facilities, and Services, including but not limited to Hosting Services, which are provided by Contractor to State. SaaS could also refer to a platform as a service or PaaS on which Software is operating.

“Schedule”: The dates described in the Work Plan for deadlines for performance of Services and other events and activities. Also referred to as the Project Schedule in the RFP.

“Security Incident”: A security incident is the intentional or unintentional attempted or successful unauthorized electronic or physical access, use, disclosure, modification, or destruction of information or interference with System operations.

“Self Help Code”: Any back door, time bomb, drop dead device, lockup program, or other software routine designed to disable a Deliverable, Service or other computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. Self Help Code does not include software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee’s computer system(s) (e.g., remote access via modem) solely for purposes of technical support.

“Services”: The tasks performed and provided by Contractor as described in the RFP, the Response, the other parts of the Contract, and Change Orders, including without limitation Implementation Services, Project management, testing, production, Hosting Services and other parts of SaaS, Operations, Maintenance, and delivery of the Services and Deliverables (including but not limited to Enhancements), Training, and Warranty Services.

“Severity Level 1 Deficiency”: A Deficiency that causes: (a) a complete failure or application unavailability of the System, in whole or in part; (b) failure or unavailability of the System, in whole or in part, in one or more State remote locations; or (c) loss of multiple System Functions.

“Severity Level 2 Deficiency”: A Deficiency for which there is no Workaround acceptable to State and which causes (a) repeated, consistent failure of Functions, (b) a Deficiency which affects more than one User or (b) loss or corruption of Data.

“Severity Level 3 Deficiency”: A Deficiency that has an existing Workaround acceptable to State, a Deficiency that impacts a Function, or a Level 2 Deficiency that affects only one User.

“Severity Level 4 Deficiency”: A Deficiency that doesn’t impact Functions or that is a cosmetic or other Deficiency that does not qualify as any other Deficiency.

“Site(s)”: The location(s) for the Contractor Equipment, Software, Data, and Facilities, and shall include the location of any reports requested for audit or review by State.

“Software”: The application software for the System, as described in the RFP, Response, the other parts of this Contract, and Change Orders; Custom Software; Functions; the Releases; the Configuration; all Enhancements thereto; Third-Party Software; and the Contractor Technology, all of the above in Source Code and Object Code formats. Software includes all prior, current, and future versions of the Software and all Deficiency corrections. Embedded code, firmware, internal code, microcode, and any other term referring to software that is residing in the Equipment or that is necessary for the proper operation of the Equipment is not included in this definition of Software.

“Solution”: As described in the Contract, the set of capabilities that will support SSD’s Child Welfare Services Branch (CWSB), and Adult Protective and Community Services Branch (APCSB) and all products and Services required for (1) designing, developing, configuring, implementing, and deploying a new CCWIS; (2) maintaining and operating the CCWIS; and (3) performing other obligations for the CCWIS, all as described in this Contract.

“Source Code”: The series of instructions to the computer for carrying out the various tasks that are performed by a computer program, expressed in a programming language that is easily comprehensible to appropriately trained persons who translate such instructions into Executable Code which then directs the computer to perform its functions.

“Specifications”: The technical and other detailed descriptions that define the requirements under the Contract and 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, including without limitation the Electronic and Information Technology Accessibility Standards associated with Section 508 of the Rehabilitation Act. The Specifications are, by this reference, made a part of this Contract, as though completely set forth herein. Also referred to as Requirements in the RFP and Response.

“Standard(s)”: Standards and methodologies established by Federal, State, and industry organizations, including but not limited to those for organizations listed in Section 4 of Exhibit A of these General Conditions.

“State”: The State of Hawaii DHS, and any of their officials, employees, volunteers or agents acting within the scope of their duties and responsibilities.

“State Data”: Data and information owned or in the possession of the State, including but not limited to (i) data and information relating to the State, (ii) personally identifiable information of State recipients (iii) protected health information or electronic protected health information of State residents, and (iv) all processed, aggregated and/or de-identified forms of State Data, even where such processing, aggregating or de-identification is performed by Contractor.

“State procurement officer”: The procurement officer of DHS.

“State Project Manager”: The person designated by State to be responsible for day-to-day management of State resources and monitoring the status of Contractor’s performance under the Contract. The term includes, except as otherwise provided herein, an authorized representative of the State Project Manager acting within the limits of his/her authority.

“Subcontractor”: A person, partnership, or company, not in the employment of or owned by Contractor, which is performing Services or providing Deliverables under this Contract, and which has a separate contract with or on behalf of Contractor.

“System”: The complete collection of all Deliverables, Software, Services (including but not limited to the Hosting Services) as described in the RFP, the Response, the other parts of this Contract, and Change Orders, integrated and functioning together with the Data on the Equipment which is hosted and operated by Contractor that must be or DHS and Contractor

agree in writing shall be implemented, operated, and maintained, all in accordance with the applicable Specifications. The System, in whole and in part, is considered a good under applicable provisions of the Uniform Commercial Code as promulgated in the State of Hawaii, for purposes of this Contract. Started from the Title XIII, Section 13713, ENHANCED MATCH FOR AUTOMATED DATA SYSTEMS, of the Omnibus Budget Reconciliation Act (OBRA) of 1993 (Public Law 103-66), enacted on August 19, 1993. The System is required to be a comprehensive automated case management tool that supports social workers' foster care and adoptions assistance case management practice. The System is also referred to as the CCWIS in the RFP and other parts of this Contract, including without limitation these General Conditions to this Contract.

“System Testing”: Testing that is performed on the System (in whole and in part) by Contractor before beginning Acceptance Tests on the System and after Contractor has: (i) completed installation of the Software on the applicable Equipment for each Release and the System; (ii) completed development of the Configurations and Custom Software; (iii) integrated the Software, including Third-Party Software, Custom Software, System Configurations, with the Data, Facilities, Services, and Equipment for each Release and as the System; (iv) pre-tested each Release and the System for compliance with the applicable Specifications; and (v) confirmed the readiness of each Release and the System for Acceptance Tests in accordance with the Contract.

“Technological safeguards”: The technology, policy, and procedures for use of the technology to protect and control access to personal information.

“Time shall be of the essence”: Performance strictly in accordance with the Schedule and milestones for Services, Work Product, and Deliverables, subject only to delays directly, and to the extent, caused by State that are not capable of cure.

“Third-Party Software”: Software and documentation that are: (i) developed by third Party; (ii) generally distributed for commercial use; (iii) not specifically designed or developed for State, including without limitation operating system software, tools, utilities, and commercial-off-the-shelf software; and (iv) supplied for use with the Deliverables and Services pursuant to this Contract.

“Training”: Organized activity of the Contractor in providing State, its employees and contractors with information, knowledge and skill in the operation and use of Services and Deliverables under the Contract.

“Unauthorized Code”: Any virus, Trojan horse, worm or other software routines or equipment components designed to permit unauthorized access to disable, erase, or otherwise harm Software, Equipment, Facilities, Hosting Services, or Data or to perform any other such actions.

“User Acceptance Tests” or “UAT”: Any type of Acceptance Test performed by State to determine that the Services and Deliverables provided by Contractor comply with applicable Specifications.

“User(s)”: Party who will have use of, and access to the System, including but not limited to State staff.

“Warranty Period(s)”: The one year period(s): (i) which begins following Acceptance of each Deliverable and Service (including without limitation SaaS), following Go-Live of each Function and Release, and following Go-Live of the System, in whole and in part, including without limitation Functions, Releases, and other Deliverables and Services (including without limitation SaaS) that previously received Acceptance and that are integrated into the System; and (ii) during which Contractor shall provide Warranty Services at no cost.

“Warranty Services”: The Services to be provided to State by Contractor during the Warranty Period(s) as described in Sections 12 and 13 of these General Conditions, the RFP and the Response.

“Workaround”: A method for temporarily eliminating a Deficiency until the Deficiency is permanently corrected.

“Work Plan”: The overall plan of activities for the delivery of Services and Deliverables, 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 and Section 7.2 of these General Conditions.

“Work Product”: Data and products produced under this Contract including but not limited to, Deliverables, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Configurations, Custom Software, Data, and databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law.

2. Term. The term shall be as described in Section 5.5 in the RFP and the Time of Performance section of this Contract.

3. Financial Matters.

3.1 Charges.

3.1.1 Contractor shall have the right to issue an invoice for Services and Deliverables following the Payment Events. Except as otherwise provided herein and subject to State’s receipt of a correct invoice, to performance by Contractor of its obligations, and to State’s exercise of its rights and remedies, State shall pay Contractor the Charges for the Services and Deliverables which are described in the attached Exhibit A within 30 Days of receipt of such an invoice issued in accordance with this Contract. 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.

3.1.2 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 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.

3.1.3 Penalty. Any person who renders a proper statement for goods delivered or services performed, pursuant to contract, to any agency of the State or any county, shall be paid no later than thirty calendar days following receipt of the statement or satisfactory delivery of the goods or performance of the services. In the event circumstances prevent the paying agency from complying with this section, the person shall be entitled to interest from the paying agency on the principal amount remaining unpaid at a rate equal to the prime rate for each calendar quarter plus two per cent, commencing on the thirtieth day following receipt of the statement or satisfactory delivery of the goods or performance of the services, whichever is later, and ending on the date of the check. As used in this subsection, "prime rate" means the prime rate as posted in the Wall Street Journal on the first business day of the month preceding the calendar quarter.

3.1.4 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

3.2 Maximum Amount and Costs.

3.2.1 Maximum Amount. The Maximum Amount payable under the terms of this Contract. shall be as set forth in the Compensation and Payment section of this Contract. Contractor shall not increase the Maximum Amount or Charges, except pursuant to a written amendment to this Contract between the Party.

3.2.2 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:

3.2.2.1 By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

3.2.2.2 By unit prices specified in the Contract or subsequently agreed upon;

3.2.2.3 By the costs attributable to the event or situation covered by such provisions, plus appropriate profit or fee adjustments, all as specified in the Contract or subsequently agreed upon;

3.2.2.4 In such other manner as the Party may mutually agree upon; or

3.2.2.5 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

3.2.3 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.

3.2.4 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.

3.3 Transportation and Insurance Charges. Contractor shall pay the costs associated with transportation, delivery, and insurance, if any, for each Deliverable.

3.4 Taxes.

3.4.1 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

3.4.2 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 Section 15.5.7 of these General Conditions.

3.4.3 Contractor understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing Services within the State, payment of use tax on property used within the State, and corporate and/or personal income tax on income earned within the State. Contractor shall pay all taxes lawfully imposed upon it with respect to the Contract or any product delivered in accordance herewith. State makes no representations whatsoever as to the liability or exemption from liability of Contractor to any tax imposed by any governmental entity.

3.4.4 Contractor represents and certifies under the pains and penalties of perjury that, as of the date the Contract is signed, Contractor is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Hawaii.

3.4.5 Contractor understands that final payment under this Contract may be withheld if the Contractor is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Hawaii.

3.4.6 Contractor understands and agrees the State may set off taxes (and related penalties, interest, and fees) due to the State of Hawaii, but only if Contractor has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined, and Contractor has no further legal recourse to contest the amounts due.

3.4.7 Contractor understands and agrees that all tax returns required by the Internal Revenue Code and the State of Hawaii, including but not limited to income, withholding, sales, and use, and rooms and meals, must be filed by Contractor, and information as to Contract income will be provided by the State of Hawaii to the Internal Revenue Service and the Hawaii Department of Taxation.

3.5 Contractor Expenses.

3.5.1 Contractor shall pay Contractor's out-of-pocket expenses incurred in connection with providing the Services and Deliverables and shall be responsible for payment of all expenses related to salaries, benefits, employment taxes, insurance, travel, and per diem for its Staff.

3.5.2 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.

3.5.3 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.

3.6 Invoices.

3.6.1 Contractor shall submit correct monthly invoices to the following person (or other person designated by the State in writing) for all Charges and other amounts to be paid by State hereunder.

Kimberly Ayala
Department of Human Services
Social Services Division
1010 Richards Street, Suite 216
Honolulu, Hawaii 96813

3.6.2 All payments under this Contract shall be made only upon submission by the Contractor of original invoices meeting the requirements of Section 3.6.5 of these General Conditions. Contractor shall not submit an invoice for Payment Events until after their occurrence.

3.6.3 At a minimum (and in addition to other requirements stated in this Contract), Contractor shall provide monthly reports to the State Project Manager tracking the progress of work towards the agreed-upon Deliverables. Each payment is conditioned upon proof of satisfactory completion of the agreed-upon Deliverables. Proof of satisfactory completion, for purposes of this provision, will be made through a Deliverables Acceptance Document prepared by Contractor. Signature blocks must be included for each Deliverable, and it will be signed by Contractor and the State Project Manager or his or her designee if in their judgment the deliverable was satisfactorily completed.

3.6.4 All invoices submitted must meet with the approval of the State Project Manager or his or her designee(s) prior to payment. Contractor shall only submit invoices for Services or Deliverables as permitted by this Contract. Incorrect or incomplete invoices will be returned by State to Contractor for correction and reissue. The Contract number must appear on all invoices, bills of lading, packages, and billing correspondence relating to this Contract.

3.6.5 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.; and shall provide detailed supporting documentation in a format as requested by State, including without limitation:

3.6.5.1 Contractor name, address, telephone number, and Federal Tax Identification Number;

3.6.5.2 An itemization of each Deliverable for which payment is sought, and the Acceptance date triggering payment, if applicable;

3.6.5.3 Applicable Charges;

3.6.5.4 Delivery Date(s) of Service delivery and/or Deliverables, as applicable;

3.6.5.5 By Change Order, the number of dollars or hours charged with the number of dollars or hours agreed to;

3.6.5.6 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 any other Project-related costs with a detailed, itemization of such costs, if applicable;

3.6.5.7 Sales or use taxes, if applicable;

3.6.5.8 Credits and liquidated damages, if any; and

3.6.5.9 Total amount due.

3.7 Funding.

3.7.1 The Party acknowledge and agree that the award of a Contract and any allowed renewal or extension thereof, is subject to allotments made by the Director of Finance, State of Hawaii, pursuant to chapter 37, HRS, and subject to the availability of Federal and State funding. 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.

3.7.2 If funding, to make payments in accordance with the provisions of this Contract, is delayed or is reduced from the Federal government and/or the State for the terms of this Contract, or is not allocated or allotted in full to State by the Federal government and/or the State for periodic payment pursuant thereto in the current or any future fiscal period, then the obligations of State to make payments will be delayed accordingly, be reduced accordingly or cease and terminate, in which case the State shall have the right to terminate the Contract as provided in Section 22.7 of these General Conditions.

3.7.3 If appropriations are insufficient to support this Contract, the State may cancel on a date agreed to by the Party or upon the expiration or reduction of existing appropriation authority. In the case that this Contract is funded in whole or in part by Federal or other non-State funds, and in the event those funds become unavailable or reduced, the State may suspend or cancel this Contract immediately, and the State shall have no obligation to fund this Contract from State revenue.

3.7.4 If such funding is reduced, Contractor shall provide State with at least three options of which Services and Deliverables should be completed with the reduced funding (State and Contractor shall confer about these options) and State in its sole discretion shall determine which aspects of the Contract shall proceed, which Services shall be performed, and which Deliverables completed, with Contractor's Charges for such Services and Charges for associated Deliverables determined in accordance with those in the Response. In these situations, State will pay Contractor for Services and Deliverables in accordance with the terms of Sections 22.7 and 22.8 of these General Conditions. Any obligation to pay by State will not extend beyond the end of State's then current- funding period, except as otherwise provided in Sections 22.7 and 22.8 of these General Conditions.

3.7.5 Contractor expressly agrees that no penalty, costs, expenses, losses, or damages shall be applied to, or shall accrue to, State in the event that the necessary funding to pay under the terms of this Contract is not available, not allocated, not allotted, delayed or reduced.

3.8 Most Favored Customer. Contractor agrees all the prices, terms, rates, warranties, and benefits granted by Contractor for Deliverables or Services are comparable to or better than the terms, prices, warranties, and benefits, being offered by Contractor to any comparable customer of similar size and requirements as State. Except as otherwise herein provided, if Contractor shall, during the term of this Contract, enter into arrangements with any comparable customer of similar size and requirements as State to provide greater benefits or more favorable terms than as provided herein for provision of same or similar services as provided to State, Contractor shall provide the same to State.

3.9 Overpayments or Erroneous Payments. Contractor shall promptly, but in all cases within 30 days, credit State the full amount of any erroneous payment or overpayment upon the invoice immediately following Notice of an erroneous payment or overpayment to which Contractor is not entitled. Contractor shall also promptly reimburse State and in all cases credit State for any funds paid to Contractor subsequent to a determination that such was unauthorized, fraudulently obtained, or inappropriately billed. If Contractor fails to make such a timely credit, State may charge Contractor one percent per month on the amount due until paid in full.

3.10 Advance Payments Prohibited. No advance payment shall be made for goods or Services furnished by Contractor pursuant to this Contract.

3.11 Credits. State may apply any credits due State under this Contract against Contractor's invoices with appropriate information attached, upon giving of Notice required herein, if any, by State to Contractor.

3.12 Use of Funds. Contractor shall not use any public funds for purposes of entertainment perquisites and shall comply with any and all conditions applicable to the public funds to be paid under this Contract, including those provisions of appropriate acts of the Legislature or by administrative rules adopted pursuant to law.

3.13 Interest. Undisputed amounts remaining unpaid after 30 Days following their due date will accrue interest and shall be paid to Contractor as provided in section 103-10, HRS.

3.14 Billing Limitations. State shall not pay any claims for payment for Services submitted more than 12 months after the calendar month in which the Services were performed unless such failure to submit the claim to State by Contractor is due to the fault of State, nor shall State pay for Services performed under this Contract if the Contractor has charged or will charge the State of Hawaii or any other third-party for the same Services.

3.15 Retainage. State shall retain a Retainage of five percent of the Charges for each Deliverable which has received Acceptance and for which State has agreed to pay Charges in a Change Order, subject to, and in accordance with the terms of section 103-32.1,

HRS. State shall authorize Contractor's submission of an invoice, and State shall pay within 30 days of receipt of such an invoice submitted in accordance with this Contract, for:

3.15.1 100% of the cumulative Retainage amount within 30 days of receipt of such invoice after Final System Acceptance; and

3.15.2 100% of the Retainage amount for each Change Order following Acceptance of all Deliverables in the Change Order.

3.16 Cost or Pricing Data.

3.16.1 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.

3.16.2 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 Maximum Amount, 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 Maximum Amount 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 Maximum Amount will be reduced in such amount.

4. Project Management.

4.1 Reports and Meetings.

4.1.1 All written reports prepared by Contractor under this Contract will be printed using both sides of the paper. Contractor shall participate in person in meetings as described below, and as may be agreed upon between the Party, except when such meetings may be conducted by telephone conference call, videoconference, and/or web conference in State's sole discretion.

4.1.2 The Contractor Project Manager and other appropriate Key Personnel shall attend weekly status meetings with the State Project Manager and other members of State during the Project at times as mutually agreed upon in a Project management plan. These meetings shall follow a preset agenda jointly prepared by the Contractor Project Manager and State Project Manager but will also allow both Contractor and State to discuss other issues that may concern either party.

4.1.3 Written Project status reports shall be provided by Contractor in accordance with RFP, including but not limited to weekly and within three days after the reporting period closes. Project status reports shall describe the previous week's activities, including Deficiencies encountered, and their disposition, results of tests, whether or not deadlines were met, and any Deficiencies that may have arisen that need to be addressed before

proceeding to the next activities. Also described will be the anticipated activities for the current week and any changes to Project risks and risk mitigations. All Reports shall be produced in formats and with the level of detail approved by State and delivered in accordance with the terms of this Contract.

4.1.4 Contractor shall provide consistent communications to the State Project Manager including status reports and electronic communications (e.g., electronic reports and newsletters or accessible dashboards) that can be provided by State to stakeholders on various levels.

4.1.5 Contractor shall produce a monthly report summary that compares actual performance by Contractor of the Services (including but not limited to activities related to Deliverables) to budgeted Charges and dates in the Schedule. Contractor shall provide such monthly report summary for such Services to State.

4.1.6 As requested by State, the Contractor Project Manager shall both prepare and assist the State Project Manager in preparing special Reports and presentations related to the provision of the System for State. The Contractor Project Manager and other Key Personnel shall also provide or produce such Reports or information as are requested by the State Project Manager.

4.1.7 The Contractor Project Manager or a designee shall attend, at a minimum, quarterly account and Work Plan review meetings with the State Project Manager, and at other times as agreed upon by the Party. Contractor senior management and Subcontractor senior management (in Contractor's discretion) shall meet on a calendar quarterly basis with executives of the State for the Contractor Project Manager to report on the status of the Project, progress in completing the Work Plan, issues, and risks on the Project, and plans to resolve outstanding issues.

4.2 Contractor Project Manager.

4.2.1 Contractor must assign a qualified Contractor Project Manager who is approved by State prior to the assignment. The Contractor Project Manager must be of a management level sufficient to assure timely responses from all Contractor personnel. The Contractor Project Manager's resume and qualifications shall be reviewed and approved by State prior to his or her appointment as Contractor Project Manager. The approval process may include, at State's discretion, an interview with the proposed original or any replacement Contractor Project Manager. The Contractor Project Manager shall be responsible for acting as a liaison between the Contractor and the State Project Manager.

4.2.2 Contractor represents and warrants that the Contractor Project Manager shall be fully qualified to perform the tasks required of that position under this Contract. The Contractor Project Manager shall function as Contractor's authorized representative for all management and administrative matters not inconsistent with the provisions contained herein. The Contractor Project Manager shall be able to make binding decisions pursuant to this Contract for Contractor and approve Change Orders for Contractor. A written commitment by the Contractor Project Manager and persons designated by him or her in writing

for this purpose, within the scope of this Contract, shall be binding upon Contractor. The Contractor Project Manager or other substitute Project management personnel for Contractor shall be full-time until Acceptance of all Project related Deliverables following Go-Live of the System.

4.2.3 The Contractor Project Manager shall not be changed from the person proposed in the Response. If the Contractor Project Manager is removed or replaced, Contractor will promptly (but no more than ten days after such removal or replacement) provide Notice to State, submit a resume, and obtain approval of the replacement Contractor Project Manager from State, prior to his or her beginning work on the Project. Contractor shall temporarily fill the Contractor Project Manager within seven Days of it being vacated and shall fill the position with a permanent fulltime replacement within 45 Days of the Contractor Project Manager's removal or departure.

4.3 Contractor Staff.

4.3.1 The Contractor shall secure, at the Contractor's own expense, all Staff required to perform this Contract. Prior to the Effective Date, Contractor shall have provided to State an organization chart of Contractor's Staff, including names of Key Personnel for the Project. Contractor shall also provide to State job descriptions for Key Personnel positions. Contractor shall remove and replace Key Personnel, if requested by State, within two weeks of the request for removal.

4.3.2 During the term of the Contract, State reserves the right to approve or disapprove Contractor's and any Subcontractor's Key Personnel assigned to this Contract, to approve or disapprove any proposed changes in Key Personnel, or to require the removal or reassignment of any Contractor or Subcontractor Staff found unacceptable by State, subject to State's compliance with applicable laws. Contractor shall remove and replace Staff, if requested by State, within two weeks of the request for removal. Contractor shall provide State with a resume of any member of its Key Personnel or a Subcontractor's Key Personnel assigned to or proposed to be assigned to any aspect of the performance of this Contract prior to commencing any Services.

4.3.3 Except in the case of a leave of absence, sickness, death, or termination of employment, Key Personnel shall not be changed during the Project from the people who were described in the Response without the prior written approval of State until completion of their assigned tasks, as described in the Work Plan, or the end of the Warranty Period for the System if such tasks are not so described in the Work Plan. Such changes to Key Personnel as permitted herein may be made pursuant to written letters that are approved by State.

4.3.4 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.

4.3.5 The personnel Contractor assigns to perform the services shall be properly trained and qualified for services they are to perform. All Staff proposed by Contractor as replacements for other Key Personnel shall have comparable or greater skills for performing the activities as performed by the Staff being replaced. No costs or expenses of Contractor associated with replacement or training of personnel shall be passed to the State. Any unavailability of Contractor personnel, discontinuity in Contractor's Project team or other Contractor personnel-related cause will not excuse Contractor's failure to perform as specified in this Contract. Contractor agrees that personnel identified as Key Personnel in the Contract shall participate in the delivery of the services in the capacity indicated and Contractor shall ensure that each of the Key Personnel stays assigned to the performance of the Services until completed and that other assignments will not impair the ability of any Key Personnel to perform such Services.

4.3.6 Contractor assumes sole and full responsibility for its acts, and the acts of its Staff. Contractor understands and agrees that State does not assume liability for the actions of Contractor's Staff. Contractor agrees that it has no right to indemnification or contribution from State for any judgments rendered against Contractor, its Subcontractors, or other Staff.

4.3.7 Contractor agrees that any claim on behalf of any person arising out of employment or alleged employment by Contractor (including, but not limited to, claims of discrimination against Contractor, its officers, or its agents) are the sole responsibility of Contractor, and are not the responsibility of State. Contractor will indemnify and hold State harmless from any and all such claims asserted against State. However, the State may participate in the defense of any such action if principles of governmental or public law are involved or the State in its discretion chooses to participate. Any person who alleges a claim arising out of employment or alleged employment by Contractor will not be entitled to any compensation, rights, or benefits from State (including, but not limited to, tenure rights, medical and hospital care, sick and annual/vacation leave, severance pay, or retirement benefits).

4.4 State Project Manager. The Contractor Project Manager's primary point of contact in matters of contract performance and management shall be the State Project Manager. The State Project Manager or his or her designee or successor will manage this Contract on behalf of State and will be the principal point of contact for the Contractor concerning Contractor's performance under this Contract. State shall have the right to change the State's Project Manager in its sole discretion.

4.5 Employment of State Personnel. Subject to the terms of chapter 84, HRS, Contractor shall not knowingly engage any person(s) who are or have been employed within the past 12 months by the State of Hawaii to assist or represent the Contractor for consideration in matters which he/she participated as an employee or on matters involving official action by the State agency or subdivision, thereof, where the employee had served. In accordance with section 84-16, HRS, and in addition to any other penalty provided by law, any contract entered into by the State in violation of chapter 84, HRS, is voidable on behalf of the State; provided that in any action to void a contract pursuant to section 84-16, HRS, the interests of third Party who may be damaged thereby shall be taken into account, and the action to void

the transaction is initiated within 60 days after the determination of a violation under chapter 84, HRS. The attorney general shall have the authority to enforce this provision.

4.6 Reference and Background Checks. Due to the confidential nature of the information and materials which will be accessible to Contractor, DHS shall have the right to require reference checks and background checks on Contractor Staff to be used to provide the Services. DHS reserves the right in its sole discretion to reject any proposed staff as a result of information produced by such reference checks, background checks, or additional sources of information. Contractor shall conduct reference checks and background checks on Contractor Staff to be used to provide the Services. Contractor shall use an external screening agency to perform such background and reference checks and Contractor represents and warrants that such procedures are and shall be at least consistent with good industry practices. Contractor shall provide State with the results of such background and reference checks. State reserves the right in its sole discretion to reject any proposed Staff as a result of information produced by such background and reference checks or additional sources of information. Contractor agrees that, as a requirement of this Contract, any Staff performing work under this Contract, may be required to, and, if required by State, shall: (i) pass a fingerprint-based background check in accordance with State requirements; and (ii) conduct and provide results of a criminal background investigation. Contractor shall pay the costs of the background and fingerprint checks and investigations. Contractor shall comply with State instructions on submitting fingerprints and other information to State in order to complete these checks. And such an investigation as described above may include, but not be limited to, criminal history records checks. Contractor further agrees to cooperate fully with State in completion of these checks and investigations. Contractor must provide proof that it performed the above-described checks requested by State. Results of the checks and investigations and/or failure of Contractor to cooperate fully may be grounds for termination of this Contract. Failure of a Staff member to cooperate with State during the background checks (including but not limited to fingerprint-based background check) as described above will result in State's rejection of such person and may result, in State's discretion, in the immediate termination of the Contract. To the extent permitted by applicable laws, rules, and regulations, Contractor shall not permit Staff who are found to have a criminal record in any state from working on the Contract.

4.7 Records Retention and Access Requirements.

4.7.1 Contractor agrees to the conditions of all applicable State and Federal regulations, which are incorporated herein by this reference, regarding retention and access requirements relating to all financial and programmatic records, supporting documents, statistical records, and other records pertaining to Services and Deliverables provided pursuant to this Contract. In addition, Contractor agrees to the terms of the Contract regarding retention of records and access for State and Federal government officials.

4.7.2 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:

4.7.3 All such records shall be subject to examination, inspection, copying, or audit by personnel so authorized by the State Project Manager, State and Federal

officials so authorized by law, rule, regulation or contract, when applicable. During the term of this Contract, Contractor shall provide electronic copies in formats reasonably requested by State of these records to the extent commercially practicable. However, access to these records will be provided within Honolulu, Hawaii, at no cost to State or at a location mutually agreed upon in writing by the Party. During the six-year period after this Contract term or one year term following litigation, delivery, and access to these items will be at no cost to State. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors.

4.7.4 The records retention and review requirements of this Contract shall be included by Contractor in any of its subcontracts with Subcontractors.

4.7.5 In accordance with 45 CFR 95.615, Access to Systems and Records, and in accordance with section 103D-316, HRS, State and the Federal Government or their authorized representatives shall, during normal business hours, have the right to enter into the premises of the Contractor and/or all subcontractors and providers, or such other places where duties under the Contract are being performed, to inspect, monitor, or otherwise evaluate the work being performed. All inspections and evaluations shall be performed in such a manner as to not unduly delay the Contractor's work. State's personnel shall be accompanied by Contractor personnel at all times during any examination, inspection, review or audit. Contractor shall make no charges for services rendered in connection with an audit requested by State.

4.7.6 Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the State may require an audit of cost or pricing data.

4.8 Accounting Requirements. Contractor shall establish and maintain an accounting system with procedures and practices in accordance with generally accepted accounting principles, as interpreted by State and other pertinent Federal and State authorities, and that conforms to any other accounting requirements required by State or other entities, or any pertinent Federal and State authorities. State in its discretion may accept compliance for purposes of this section through the adoption by Contractor of and Contractor's conformance with the International Financial Reporting Standards. The accounting system shall maintain records pertaining to the Services and all other costs and expenditures made under this Contract, and the costs properly applicable to the Contract shall be readily ascertainable therefrom.

4.9 Supplemental Contracts. State may undertake or award supplemental contracts for work related to this Contract, or any portion thereof. Contractor shall fully cooperate with such other contractors and State in all such cases. Contractor shall ensure that all Subcontractors shall abide by this provision. It is understood and agreed by the Party hereto that Contractor shall not be responsible for the acts or failures to act of any such other contractors or for any delays which may be caused by any such other contractors, except that Contractor shall be responsible for delays of, or acts or failures to act of, such other contractors to the extent such delays, or acts or failures to act are caused by or due to the fault of Contractor.

4.10 Audit Reports. Contractor shall cause a Standards for Attestation Engagements 18 (SSAE 18) Type II audit certification to be conducted annually for the System. The audit results and Contractor's plan for addressing or resolution of the audit results shall be

shared with the State within 60 calendar days of Contractor's receipt of the audit results. Further, on an annual basis, within 90 calendar days of the end of Contractor's fiscal year, Contractor shall transmit its annual audited financial statements to the State.

4.11 Quality Control. State may conduct quality control reviews throughout the term of the Contract to review and coordinate progress of the overall development and implementation of the Project. Contractor shall cooperate, participate, and assist State in the performance of such quality control reviews. Such reviews may include, but are not limited to, design review, code review, architectural review, System performance review, a general review of each Deliverable, and/or working with an independent verification and validation contractor, a quality assurance contractor, or other contractors that have been assigned to or working with the State on the Contract.

4.12 Coordination of Services by the State. HOPA or the HOPA's designee 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 or the designee at all stages of the Contractor's work and submit to HOPA or the designee for resolution any questions which may arise as to the performance of this Contract. The Contract shall be executed by the State of Hawaii DHS in accordance with chapter 103D, HRS, and the administrative rules promulgated there under.

4.13 Wages, Hours, and Working Conditions. The Contractor shall certify that it complies with Section 103-55, HRS, Wages, hours, and working conditions of employees of Contractors performing services. Contractor shall complete and submit the Wage Certification as provided in HI DHS CCWIS RFP Template T-8 - State of Hawaii Proposal and Contracting Forms of the RFP, pursuant to Section 103-55, HRS.

5. Services and Resources.

5.1 Performance. Contractor shall perform the Services and provide Deliverables as described and required by this Contract and all subsequent Contract amendments, including but not limited to any such Enhancements to Services and Deliverables implemented by Contractor to achieve the purposes of this Contract. Contractor shall have responsibility for managing the Contract to successful completion in accordance with the requirements in this Contract. 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.

5.2 Necessary Resources. State shall provide resources and personnel that are described in Section 3.6 of the RFP as being provided by the State. Contractor shall provide, at Contractor's expense, the personnel and all other materials and resources necessary for the performance of the Services and provision of Deliverables. Contractor shall ensure that its representatives have the Equipment, Software, Facilities and Services necessary to complete the engagement as identified in this Contract. State will not supply hardware or software to

Contractor unless specifically agreed to in writing. Charges shall be reduced to the extent that State performs obligations which are described in this Contract as being performed by Contractor.

5.3 Ownership. Title to all Property furnished by State shall remain under title of State. Title to all Property purchased by Contractor, for which Contractor has been directly reimbursed by State under this Contract, shall pass to and vest in State unless otherwise authorized by State.

5.4 Use of Property. Any Property furnished to Contractor by State shall, unless otherwise provided herein, or approved in writing by the State Project Manager, be used only for the performance of its obligations under and subject to the terms of this Contract.

5.5 Damage to Property. Contractor shall protect and be responsible for any loss, destruction, or damage to Property which results from or is caused by Contractor's willful misconduct or negligent acts or omissions or from the failure on the part of Contractor to maintain and administer the Property in accordance with the terms of this Contract. Notwithstanding anything to the contrary herein, Contractor shall be liable to State for any damages resulting from damage to Property, which damages result from or are caused by Contractor's acts or omissions. Contractor shall ensure that the Property is returned to State in like condition to that in which it was furnished to Contractor, reasonable wear and tear excepted. Contractor shall repair or make good any such damage, destruction, or loss of any Property, and shall do so without requesting contribution from State.

5.6 Notice of Damage. Upon the loss of, destruction of, or damage to any of the Property, Contractor shall notify the State Project Manager thereof and shall take all reasonable steps to protect that Property from further damage.

5.7 Surrender of Property. Contractor shall surrender to State all Property upon the earliest of expiration or termination of this Contract.

5.8 State Property and Facility. State will provide Contractor access to and use of the State Equipment for development, testing, and Implementation of any Services or Deliverables as described in the RFP and the Response requiring the use of State Equipment and other Property. Contractor's use of the State Equipment shall be subject to State's security, administrative, and other requirements.

5.9 Application of Best Practices. In connection with the provision of all Services and Deliverables in connection with this Contract, Contractor shall conform to, apply, and abide by best practices in the information technology industry, including, but not limited to, the Standards.

6. Equipment and Third-Party Software. The Party acknowledge and agree that Contractor shall provide Equipment, Hosting Services and Software as described in Section 3.7 of the RFP and the Response for Processing the Data in accordance with this Contract. Contractor must provide at least 60 days advance Notice to State before Contractor moves its

Equipment to another Site, and Contractor will provide State information as is requested by State and coordinate such move to avoid or minimize any negative impact from such move.

7. Services and Deliverables.

7.1 General.

7.1.1 Contractor shall provide the Services and Deliverables as described in Table 10 of the RFP, the Response, the Work Plan, DEDs, and other parts of this Contract, and as shall be mutually agreed upon in writing between Contractor and State. Contractor shall utilize the Specifications, the RFP, the Response, the Deliverables for which State has previously granted Acceptance, DEDs, Contractor's professional knowledge, and this Contract as the basis of Services and Deliverables. Contractor shall retain backup copies in writing and on electronic media pertaining to Data and Deliverables until 180 days after termination or expiration of this Contract, unless otherwise required by this Contract, and shall provide State on its request with a copy thereof until that time. Deliverables shall be considered goods under this Contract and applicable law.

7.1.2 All Services and Deliverables shall be subject to State's Acceptance, including without limitation Services and Deliverables which are provided pursuant to Change Orders. All Services and Deliverables that are provided by Contractor pursuant to the use of the pool of hours shall also be subject to State's Acceptance. State's Acceptance of Services and Deliverables shall be in accordance with the time frames and terms set forth in this Contract or in the Work Plan. For the term of the Contract, Contractor is not authorized to substitute any item for any Deliverable identified in this Contract without the prior written consent of the State Project Manager.

7.1.3 Contractor shall have no right to repossess any Deliverable which has received Acceptance. No Deliverables purchased, leased, or licensed in connection with the Contract shall be subject to any chattel mortgage, secured interest, or conditional sales or other agreement by which an interest is retained by Contractor, a lender, a lessor, or any other party.

7.2 Work Plan.

7.2.1 The Work Plan will be included in the Response. Contractor shall produce and provide to State an update to the Work Plan as a Deliverable with input from State within 30 Days of the Effective Date. The Work Plan shall provide detailed information, in Smartsheet® or equivalent software that can interface with Smartsheet®, such as Microsoft Project®, including but not limited to 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 Party to agree upon the update to the Work Plan and/or of State to give its Acceptance thereof within 60 Days of the Effective Date, State may invoke its right to immediately terminate this Contract without liability for such termination.

7.2.2 The 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 Deficiencies, 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 Deficiencies in accordance with the Acceptance process is longer than described in the Schedule.

7.2.3 Contractor shall provide State with updates to the Work Plan monthly, as described in the RFP and Response, 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 Party in writing, and the updated Work Plan will highlight changes made from the prior Work Plan. Any such updated changes must be agreed upon in writing by the State Project Manager before it receives Acceptance. Contractor agrees the Work Plan will become a part of this Contract by amendment upon Acceptance by State and agrees to execute any further documents necessary to accomplish this incorporation. Any Work Plan change request which would result in an increased cost to State shall be considered a Change Order under Section 15. 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 State Director of Human Services 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 under the original Work Plan. Contractor shall provide updated copies of its detailed Work Plans in Smartsheet® or equivalent software that can interface with Smartsheet®, such as Microsoft Project® accessible and usable by State. All updated versions of the Work Plan shall be subject to the State's Acceptance.

7.3 Testing and Acceptance Process.

7.3.1 Contractor shall prepare a test plan Deliverable for State Acceptance and perform System Testing as defined herein. The types of System Testing to be performed in conjunction with State personnel or third-party contractors in the State's discretion, must include but are not limited to unit testing, integration testing, performance testing, end-to-end testing, and regression testing. Acceptance dates must be incorporated in the testing schedule. State or ACF may perform a System functional requirements review before the State puts the System into Production.

7.3.2 Contractor must give Confirmation for each Deliverable and Service 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 following System Testing, State will, with Contractor's assistance as requested by the State, 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 it conforms to applicable Specifications. State will provide Acceptance for a Service or Deliverable if it has no Deficiencies. However, if a Deficiency is found, State will notify Contractor in an e-mail or other document of Deficiencies used as the grounds for State's

decision not to give Acceptance. Contractor shall correct Deficiencies at no cost to State. State will review or perform Acceptance Tests to verify whether the Service or Deliverable lacks Deficiencies and in writing shall either give its Acceptance or reject it following such review or Acceptance Tests. Contractor's times for correcting Deficiencies and State's review thereof shall be in accordance with the timeframes set in the Work Plan, or, if time periods for correcting Deficiencies by Contractor and reviewing and retesting the corrected Services or Deliverables are not in the Work Plan, each such time period shall be seven business days.

7.3.3 If Contractor is unable to correct all Deficiencies 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 Deficiencies 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 Deficiencies 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 7.3 and providing Notice of default to Contractor, terminate this Contract in whole or in part as described in Section 22.2.

7.3.4 After Acceptance of a Deliverable or Service, State shall, with input from Contractor, make a Go/No Go decision to 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. Such Go-Live decision shall be made subject to approval of appropriate Federal agencies. In addition, results of the UAT must also be submitted to ACF before the System is put into the Production environment.

7.3.5 Contractor shall have the Solution fully Operational on the date agreed for full Operational status in the Work Plan. If, for any reason, Contractor does not fully meet the Operational start date approved in the Work Plan, then Contractor shall be liable for all costs incurred by State to continue operation of the current legacy systems known as CPSS and SHAKA, as well as all Federal penalties, sanctions, fines, and disallowances. Contractor shall also forfeit all claims for reimbursement of monthly expenses or Maintenance and operations payments for that month and each month thereafter until State approves Operational readiness. If State agrees in writing to put the Solution into Operational status prior to the date agreed in the Work Plan, the functionality may be activated early, and Contractor will not be subject to the remedies described above in this Section for putting the functionality into Operational status.

7.4 Protection from Damage. Contractor shall continuously protect all Deliverables and backups prior to their receipt by State and while in Contractor's possession or control from damage, destruction or loss resulting from or caused by the acts or omissions of Contractor in connection with the Deliverables. Contractor shall ship all Deliverables purchased pursuant to this Contract, FOB State's destination. The method of shipment shall be consistent with the nature of the goods and hazards of transportation. During the period Deliverables are in transit and in possession of Contractor, its subcontractors, and carriers prior to their receipt by State, Contractor and its insurers, if any, shall relieve State of responsibility for all risks of loss

or damage thereto, unless such loss or damage are caused by the negligence or misconduct of State. After State is in receipt of a Deliverable, the risk of loss or damage shall be borne by State, except loss or damage attributable to Contractor's acts or omissions.

7.5 Delivery. Contractor shall provide to State Services and Deliverables pursuant to this Contract on or before the applicable 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 Party. Contractor must, at no cost to State, deliver to State, upon State's request during the term or at the expiration or termination of all or part of Contractor's performance hereunder, a then-current copy of all Deliverables.

7.6 Interpretation of Deliverables. Any contradiction, conflict, ambiguity or inconsistency in or between Deliverables and other documents comprising this Contract shall be resolved in accordance with State's reasonable judgment, as described in Section 23.9, and in favor of the latest State-approved Deliverable except in the case where a previously documented requirement is inadvertently omitted or not addressed directly or accurately in a subsequent Deliverable. No requirements can be omitted from the Specifications or a DED for a Service or Deliverable without the written consent of the State Project Manager.

7.7 Representation. By submitting a Deliverable or delivering a Service, Contractor represents and warrants that it has performed the associated tasks in a manner that will, in concert with other tasks, meet the Specifications, obligations, and objectives stated or referred to in this Contract. By unconditionally giving Acceptance for a Deliverable or Service, State represents only that it has reviewed the Deliverable or Service and detected no Deficiencies of sufficient gravity to defeat or substantially threaten the attainment of those objectives and to warrant the withholding of Acceptance for the work completed.

7.8 Source Code.

7.8.1 Contractor shall provide State with a copy of the Custom Software Source Code, the Configuration, updated associated technical Documentation for the Custom Software: (i) upon Acceptance of each Release; (ii) when Contractor delivers or implements an Enhancement to a Release during the term; (iii) as described in the Work Plan; and (iv) at other times during the Project, Warranty Services, and Maintenance Services, as requested by State.

7.8.2 Contractor shall provide such Source Code and Documentation at no additional cost on magnetic media in a format acceptable to State.

7.9 Knowledge Transfer. While constructing and developing the Deliverables and Services, as applicable, Contractor shall demonstrate and provide information to staff designated by State about the functions and operations of all Services and Deliverables in accordance with the RFP Specifications, Contractor's Response, subsequent amendments, other parts of the Contract, and as otherwise agreed to by the Party.

8. Licenses.

8.1 Grants to the State.

8.1.1 Contractor hereby grants to State a nonexclusive license to: (a) use and access the Contractor Technology, System, Hosting Services, and other applicable Services, in whole and in part, for supporting the internal operations of State and Processing the Data (b) grant Users the right to use and access the System and Services, in whole or in part; and (c) use, demonstrate, modify, prepare derivative works based on, and reproduce the Contractor Technology.

8.1.2 The licenses hereunder are granted as of the Delivery Date or the date of first access to or delivery of the Contractor Technology, System, Hosting Services, and other applicable Services, and continue until expiration of the term or earlier termination of the Contract, subject to Section 22.

8.2 Federal Government Agencies. In accordance with 45 CFR 95.617, the Federal Department of Health and Human Services will have a royalty free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for Federal government purposes software, modifications, and documentation designed, developed or installed pursuant to this Contract.

8.3 Title. Contractor and its suppliers hold all right, title, and interest in the Contractor Technology (except for Custom Software that will be owned by State). For purposes of this Section, Deliverables that contain Contractor Technology and Third-Party Software will be deemed to be compilations as defined in 17 U.S.C. § 101 and will be owned by State as provided in 17 U.S.C. § 103(b), and the underlying Contractor Technology and Third-Party Software included in the Deliverables by Contractor will remain owned by Contractor and its suppliers.

8.4 Documentation. Contractor shall provide Documentation required for submittal for use in electronic format compatible with Microsoft Corporation's then generally- available Office products. Documentation and Enhancements or updates thereto, shall be provided as part of the Charges. Contractor's Documentation shall be comprehensive, well structured, and indexed for easy reference. If Contractor maintains its technical and implementation Documentation on a web site, Contractor must still provide electronic versions of the Documentation to fulfill the obligations set forth in this Section. Contractor may also provide such information on CD-ROM. Contractor grants State a nonexclusive right to use, make derivative works based upon, modify, and reproduce the Documentation furnished pursuant to this Section at no additional charge during the term.

8.5 Copies. State will reproduce and include the copyright and other proprietary notices, and product identifications provided by Contractor on such copies, in whole or in part, or on any form of the Documentation provided to State.

8.6 Restrictions. Except as otherwise permitted in this Contract, State agrees not to: otherwise copy, display, transfer, adapt, modify, reverse engineer, decompile, disassemble, or distribute to any unauthorized third party or lease the Proprietary Software or any copy of it.

8.7 Versions. Unless otherwise mutually agreed to in writing, Contractor shall, during the Contract, maintain and implement any and all Proprietary Software products at their most current version or no more than one version back from the most current version, and at no additional charge. However, Contractor shall not maintain any Proprietary Software versions if any such version would prevent State from using any Functions in whole or in part or would cause Deficiencies in the System. Any additional costs that are charged by Contractor for an upgrade or Enhancement to the Proprietary Software are the sole responsibility of the Contractor and shall be charged to and paid for by Contractor

9. State Ownership.

9.1 Ownership Rights and Copyrights. 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.

9.2 Software, State Property and Other Work Products. In accordance with 45 CFR 95.617(a), the State shall have all ownership rights in software (in Source Code and Object Code formats) or modifications thereof, and associated Documentation designed, developed, or installed pursuant to this Contract. In addition, State shall own all right, title, and interest in and to State Confidential Information, State's intellectual property, State Equipment, the Deliverables, and the other Work Products.

9.3 Transfer of Ownership by Contractor. As between the Party, all Work Products, including without limitation Custom Software (except for the Contractor Technology and Third-Party Software, which for the purposes of this Section of the Contract shall not be owned by State) and Data, shall be deemed works made for hire of State for all purposes of copyright law, and copyright shall belong solely to State. If any such work is adjudged to be not a work made for hire, Contractor must assign, and hereby assigns, all copyright in such work to State, as well as all patents, trademarks, trade designs, trade secrets, and other intellectual property rights. Contractor hereby assigns and transfers all right, title, and interest in and to such Work Products to State. Contractor shall, at the expense of State, assist State or its nominees to obtain copyrights, trademarks, or patents for all such Work Products in the United States and any other countries. Contractor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents in and to such Work Products. Contractor agrees to and hereby, to the extent permissible, waives all legal and equitable rights relating to the Work Products, including without limitation any and all rights of identification of authorship, and any and all rights of approval, restriction or limitation on use or subsequent modifications.

9.4 Restrictions. The Contractor shall not sell or copyright a Work Product or item produced under this Contract without explicit permission from the State.

9.5 Data.

9.5.1 State has ownership and unlimited rights to use, disclose, duplicate, or publish all information and Data developed, derived, documented, or furnished by Contractor under or resulting from this Contract. Such Data includes all results, technical information, and materials developed for and/or obtained by State from Contractor in the performance of the Services hereunder, including but not limited to all reports, surveys, plans, charts, recordings (video and/or sound), pictures, drawings, analyses, Source Code and Object Code, graphic representations, computer programs and printouts, notes and memoranda, meeting minutes, and documents whether finished or unfinished, which result from or are prepared in connection with the Services performed as a result of this Contract.

9.5.2 All Data, including all consumer data and/or carrier data stored by Contractor hereunder must be stored exclusively at locations within the United States.

9.5.3 Contractor must provide State with a copy of all Data which is on the Equipment used for the System within five Business Days of a request from State. Contractor must provide such Data to State up to four times per year at no additional cost to State. Contractor must provide such Data to State on magnetic or electronic media in a format acceptable to State.

9.5.4 Except to the extent that Contractor is required to retain such information in accordance with State and Federal law and State policy, at the end of the term of this Contract, Contractor must delete or destroy all Data that is owned by State pursuant to this Section and must promptly certify to State in writing that Contractor has so deleted or destroyed such Data.

9.6 Notices.

Contractor must produce and include State's copyright and other proprietary notices and product identifications provided by Contractor on such copies, in whole or in part, or on any form of the Deliverables.

10. Implementation and Federal Certification.

10.1 Implementation. Contractor shall complete Implementation according to timelines agreed upon between State and Contractor based on the RFP and Response, all applicable Exhibits to this Contract, the Work Plan, Change Orders, and any subsequent amendments agreed upon between the Party pursuant to this Contract.

10.2 Training. Contractor shall provide necessary Training in accordance with the RFP and Response, all applicable Exhibits to this Contract, the Work Plan, Change Orders, and any subsequent amendments agreed upon between the Party pursuant to this Contract so as to be able to effectively test or utilize the System and Services prior to Contractor's provision of such System and Services. State and Contractor shall agree in writing upon Training Services and timelines.

10.3 Conversion. Contractor shall participate in and perform Services for Conversion as described in the RFP and the Work Plan.

10.4 Federal Certification. State and Contractor agree that Certification from ACF is a primary objective of this Contract. Pursuant to achieving this objective, Contractor agrees as part of its Services and at no additional cost than as already included in the Charges:

10.4.1 To perform Services as described in the RFP and Response;

10.4.2 To ensure the System and Services meet the requirements of ACF, including all regulations that are published and incorporated by reference in this Contract or associated Change Orders, as of the time of application for Federal Certification;

10.4.3 To ensure the System and Services meet any other State and Federal law requirements which may be enacted, including regulations or other guidelines, and that are incorporated by reference in the Contract or associated Change Orders, as of the time of application for Federal Certification;

10.4.4 To provide on a timely basis, all information, data, forms, System and Services modifications, documentation, correspondence, consultation, and assistance in training as needed to assist the State in obtaining Federal Certification;

10.4.5 To address the means of implementing program regulations which may be required following the application for Federal Certification. Agreement on the approach and cost, if any, of implementing these program regulations will be in the form of a Contract amendment, or in accordance with Section 15 (Changes) of these General Conditions; and

10.4.6 To complete, test, and implement the changes required to bring the System and Services into compliance with and be eligible for Federal Certification should ACF determine that the System and Services will not receive Certification.

11. Additional State Standard Provisions.

11.1 Certificates. 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..

11.1.1 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.

11.1.2 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.

11.1.3 In lieu of the above certificates from the Department of Taxation, Department of Labor and Industrial Relations, and Department of Commerce and Consumer

Affairs, the Contractor may submit proof of compliance through the State Procurement Office's designated certification process, Hawaii Compliance Express.

11.2 Rights Reserved.

11.2.1 State reserves the right to secure certain products and services from other existing State contracts if it is in its best interest to do so. Contractor shall integrate/interface its Solution with such products and services within the Schedule and under this Contract with no additional cost to State.

11.2.2 State's use of Equipment or Software obtained under this provision will not reduce or limit any of Contractor's obligations under this Contract or any of its warranties as to the performance or interoperability of all components of the Solution or its warranties of Deliverables.

12. Warranties.

12.1 Deliverables, Functions, Releases, Services and System.

12.1.1 Contractor represents and warrants that each Deliverable and Service shall conform to and perform in accordance with applicable Specifications following its Acceptance by State. Such Deliverables shall include but not be limited to Functions, Releases, Services (such as Hosting Services) and the System, in whole and in part, including without limitation Functions, Releases and other Deliverables and Services that previously received Acceptance, that may have completed their individual Warranty Periods, and that are integrated into the System. Contractor shall in accordance with Exhibit B of these General Conditions promptly repair or replace each of the Services and Deliverables (including without limitation each Deliverable, each Function, each Release, each Service and the System, in whole and in part, including without limitation Functions, Releases and other Deliverables and Services that previously received Acceptance, that may have completed their individual Warranty Periods, and that are integrated into the System) that does not meet applicable Specifications as part of the Warranty Services, including without limitation each Deliverable, each Function, each Release, Services, and the System, in whole and in part, including without limitation Functions, Releases and other Deliverables and Services that previously received Acceptance, that may have completed their individual Warranty Periods, and that are integrated into the System. Contractor shall absorb all costs associated with repairing or replacing each of the Services and Deliverables that does not meet applicable Specifications during the Warranty Period, including without limitation for each Deliverable, each Function, each Release, each Service, and the System, in whole and in part, including without limitation Functions, Releases and other Deliverables and Services that previously received Acceptance, that may have completed their individual Warranty Periods, and that are integrated into the System. If a Deliverable includes any products provided by third Party, such as Third-Party Software, Contractor shall fully cooperate with and coordinate the work with such third Party and State to promptly repair and replace the Deliverables in accordance with Exhibit B of these General Conditions at no additional charge.

12.1.2 Contractor also represents that it has and warrants that it will have the capability and capacity to produce the Deliverables it has agreed to provide to State, that it

will secure all Third-Party Software licenses necessary to provide the Deliverables in accordance with the terms of this Contract, and that each Deliverable will be implemented into Production and supported by Contractor to meet the requirements in this Contract. If additional Software licenses or Deliverables, including Enhancements, are needed for Third-Party Software for Contractor to meet this representation and warranty, Contractor must provide such Software licenses and Deliverables at no charge.

12.1.3 Contractor represents and warrants that:

12.1.3.1 Contractor shall perform all Services required pursuant to this Contract in a professional, timely, and diligent manner, in accordance with applicable Specifications, the highest professional or technical standards applicable by such Services with due care, and with quality, knowledge, and experience in business and systems integrations, maintenance, support, and operations;

12.1.3.2 Contractor shall perform the Services with qualified persons with the technical skills, training, and experience to perform such Services;

12.1.3.3 Contractor shall give highest priority to the performance of Services;

12.1.3.4 The Services and System shall comply with the Performance Standards;

12.1.3.5 Time shall be of the essence with respect to Contractor's performance under the Contract;

12.1.3.6 Any person assigned to perform Services hereunder meets the employment eligibility requirements of all immigration laws of the United States; and

12.1.3.7 At its own expense, and without limiting any other rights or remedies of State hereunder, Contractor shall immediately correct or re-perform, as applicable, any Services that State has determined to be unsatisfactory in its discretion or that are not in compliance with such representations or warranties, or Contractor will refund that portion of the fees attributable to each such non-compliance.

12.1.4 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.

12.1.5 Contractor represents and warrants that Contractor may, only upon receipt of prior written approval by State, (a) incorporate any open-source software into, or combine open source software with, the Deliverables or use open source software to provide the Deliverables; or (b) distribute open source software in conjunction with or for use with the Deliverables.

12.1.6 Contractor represents and warrants that Documentation provided by Contractor under the Contract shall be in sufficient detail so as to allow technical personnel of

State to understand the operation of the Deliverables. Contractor shall promptly, at no additional cost to State, make corrections to any Documentation that does not conform to this warranty.

12.2 Intellectual Property Rights.

12.2.1 Contractor warrants that it is and shall be the owner of the Work Products that are to be transferred and assigned to State in accordance with Section 9 of these General Conditions without infringing or violating any rights of any third party.

12.2.2 Contractor represents that, as of the Effective Date, there is no actual or threatened suit by any such third party based on an alleged infringement or violation of the rights granted or licensed by Contractor to State hereunder.

12.2.3 Contractor warrants that the Work Products shall not infringe or misappropriate any right of, and will be free of any rightful claim of, any third person or entity based on patent, copyright, trade secret, unfair trade practice, or other intellectual property right.

12.2.4 Contractor represents and warrants to State that Contractor is the owner of the Contractor Technology licensed hereunder or otherwise has the right to grant to State the licensed rights to the Contractor Technology provided by Contractor through this Contract without violating any rights of any third party and that State's exercise of the licenses within the terms of this Contract will not infringe upon any copyright, patent, trademark, or other intellectual property right worldwide or violate any third party's trade secret, contract, or confidentiality rights. Contractor represents and warrants that: (i) Contractor is not aware of any claim, investigation, litigation, action, suit or administrative or judicial proceeding pending or threatened based on claims that the Contractor Technology infringes any patents or copyrights, or misappropriates trade secrets or other rights of any third party, and (ii) Contractor has no actual knowledge that the Contractor Technology infringes upon or misappropriates any patents, copyrights, trade secrets or other rights of any third party. Contractor shall promptly provide State with Notice of each notice or claim of patent or copyright infringement, or infringement or misappropriation of other intellectual property right worldwide received by Contractor with respect to any Contractor or Technology delivered under this Contract.

12.2.5 If any Deliverable is subject to a separate shrink-wrap, click-wrap, or Third Party Software license, State's use and operation of such Deliverable (including, without limitation, opening the shrink-wrapped package or clicking "accept" or "OK" or the like) shall not limit any of State's rights or Contractor's obligations under this Contract, except as specifically set forth in this Contract or in a writing signed by State and Contractor.

12.3 Date/Time Compliance Warranty.

12.3.1 Contractor warrants that the System and associated Deliverables and all data-related output or results produced by the Services or Deliverables: (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 State that may deliver date records from the Software, or interact with date records of the Software.

12.3.2 Contractor shall immediately repair or replace the System and each of the other Deliverables and Services in breach of such representations and warranties at no additional charge to State.

12.4 Unauthorized Code and Self-Help Code. Contractor warrants to State that the System, other Deliverables, and Contractor Technology provided to State, under this Contract do not contain and shall not contain Unauthorized Code or Self-Help Code. Contractor further warrants that it will not under any circumstances, including enforcement of a valid contract right, take any step which would in any manner interfere with State's use of the Deliverables and/or which would restrict State from accessing its data files or in any way interfere with the transaction of State's business. Contractor shall, in accordance with times in Exhibit B of these General Conditions, repair or replace the System and each of the other Deliverables, Services or Contractor Technology in breach of such warranties at no additional charge to State.

12.5 Power and Authority. Contractor represents and warrants that: (i) it has the full power and authority to grant to State the rights described in this Contract without violating any rights of any third party; (ii) there is currently no actual or threatened suit by any such third party based on an alleged violation of such rights by Contractor; (iii) nothing contained in this Contract or the performance of this Contract will cause Contractor to materially breach any other contract or obligation; and (iv) Contractor and its Subcontractors are sufficiently staffed and equipped to fulfill the Contractor's obligations under this Contract. Contractor further represents and warrants that the person executing this Contract for Contractor has actual authority to bind Contractor to each and every term, condition, and obligation to this Contract, and that all requirements of Contractor have been fulfilled to provide such actual authority.

12.6 Registration. Contractor represents and warrants that it shall comply with all applicable local, State, and Federal licensing, accreditation, and registration requirements and standards necessary in the performance of the Services.

12.7 Written Commitments. Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute a material breach and shall render Contractor liable for damages under the terms of this Contract. For purposes of this Section, a commitment by Contractor includes: (i) Charges, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its Response or contained in any Contractor publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to State.

12.8 Legal and Regulatory Compliance. Contractor represents and warrants that the Services, Deliverables, and System shall comply with all applicable Federal, State, and county laws, ordinances, codes, Standards, 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 and the Solution. Costs for such ongoing compliance are included in Contractor's Charges. In the event that any Services performed, or any Deliverables provided by Contractor are subsequently found

to be in violation of such laws, ordinances, codes, Standards, rules or regulations, it shall be the sole responsibility of Contractor to bring the Services and Deliverables into compliance without any cost to State to correct such violations in accordance with the Performance Standards in Exhibit B of these General Conditions.

12.9 Compatibility. Contractor warrants that if the Software, Equipment, Facilities, or Services, in whole or in part, are replaced or upgraded by Contractor with replacement or upgraded Software, Equipment, Facility or Service components provided by Contractor, or Contractor provides Custom Software Deliverables or Enhancements, the Custom Software shall be integrated into the rest of the System and the upgraded, replaced, and modified Software, Equipment, Facilities, and Services shall operate with the rest of the Software, Equipment, Facilities, and Data in the System or Services, including without limitation, Custom Software and Third-Party Software, and Enhancements, without loss of any Functions, as provided in the Specifications, without Deficiencies, and in accordance with the RFP. By way of example but not limitation, all components or parts of the System must operate in accordance with their individual Specifications and the Specifications for the System, without Deficiency, including without limitation Enhancements for a Service, Function or Release that received Acceptance and Services, Functions and Releases that later receive Acceptance and that are integrated with specific Services, Functions, Releases or the System, in whole or in part. If State decides to produce Enhancements or to upgrade any of the Third-Party Software which is used as part of the System or which interfaces with the System with new versions or releases, Contractor will, at no additional cost to State, install and maintain the System, in whole and in part, to operate in accordance with its Specifications and to be compatible with the Enhancements and new versions or releases of the Third-Party Software. In addition, all of the technology-related components of the Solution will be backward and forward compatible among versions, and interoperable with other components and systems.

12.10 Authorization. Contractor represents and warrants that:

12.10.1 Contractor is a corporation, validly existing, and in good standing under the laws of its state of incorporation, and Contractor has all requisite power and authority to execute, deliver, and perform its obligations under this Contract; and the execution, delivery, and performance of this Contract by Contractor has been duly authorized by Contractor;

12.10.2 The execution, delivery, and performance of this Contract has been duly authorized by Contractor, and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for Contractor to enter into this Contract and perform its obligations thereunder;

12.10.3 Contractor is duly authorized to conduct business in and is in good standing in each jurisdiction in which Contractor will conduct business in connection with this Contract;

12.10.4 Contractor has obtained and shall obtain all licenses, certifications, permits, and authorizations necessary to perform the Services and deliver the Deliverables under this Contract, and currently is in good standing with all regulatory agencies that regulate any or all aspects of Contractor's provision of services. Contractor will maintain all

required certifications, licenses, permits, and authorizations during the term of this Contract, and shall provide them to the State Project Manager upon the Effective Date, and otherwise upon the State Project Manager's request at Contractor's own expense; and

12.10.5 There is no outstanding litigation, arbitrated matter or other dispute to which Contractor is a party which, if decided unfavorably to Contractor, would reasonably be expected to have a material adverse effect on Contractor's ability to fulfill its obligations under this Contract.

12.11 Ability to Perform. Contractor represents and warrants that:

12.11.1 Contractor has adequate resources to fulfill its obligations under this Contract and is of sufficient financial solvency to assure State of its ability to perform the requirements of this Contract;

12.11.2 Contractor has the financial stability to carry out at least six months of Services during any period of this Contract without reimbursement for the Services or expenses;

12.11.3 Contractor has the financial resources to fund the capital expenditures required under this Contract without advances by State or assignment of any payments by State to a financing source;

12.11.4 Each Subcontractor providing a substantial amount of the Services under this Contract has the financial resources to carry out its duties under this Contract; and

12.11.5 Contractor's methods of accounting are consistent with generally accepted accounting principles and are capable of segregating costs by phase, stage, segment, or cost objective in order to support Change Order accounting.

12.12 Non-Obsolescence. Contractor represents and warrants that except as provided in this Section, the Software, Equipment, Facilities, and Services shall not become Obsolete during the term of this Contract. Contractor has included the cost of replacement of Obsolete Software, Equipment, Facilities and/or Services through planned Obsolescence by the applicable manufacturer, service providers, and/or licensor in the Charges to be paid by State pursuant to the terms hereof. In the case that any such Software, Equipment, Facilities and/or Service becomes Obsolete during the term of this Contract, Contractor will replace the affected Software, Equipment, Facilities and/or Service with functionally equivalent Software, Equipment, Facilities and/or Services that are subject to maintenance and support by the applicable manufacturer, service providers, and/or licensor without additional cost to State. Notwithstanding the foregoing, in the event Contractor is made aware of a manufacturer, services provider, and/or licensor's planned obsolescence after the term, Contractor will promptly provide Notice thereof to State.

12.13 Performance Standards. Contractor represents and warrants that it will maintain the System and provide Services, in whole and in part, to meet the Performance Standards.

12.14 DISCLAIMERS. WARRANTIES EXPRESSLY MADE IN THIS CONTRACT ARE CONTRACTOR'S ONLY WARRANTIES CONCERNING THE SERVICES, DELIVERABLES, AND ANY WORK PRODUCT; AND ARE MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

13. Warranty Services and Maintenance Services.

13.1 General Responsibilities. During the Warranty Periods, Contractor shall provide Services as described in this Section 13 and the RFP and Response, as Warranty Services at no charge; and following the Warranty Periods as Maintenance Services. Such Service responsibilities shall include but not be limited to the following:

13.1.1 Promptly repair in accordance with Exhibit B of these General Conditions or replace the System or other Deliverables and Services, or any portion thereof, that has Deficiencies;

13.1.2 Maintain the System and Services in accordance with the Specifications and terms of this Contract;

13.1.3 Execute on-line diagnostics from a remote Contractor location solely to assist in the identification and isolation of suspected Deficiencies, subject to State's security and administrative requirements;

13.1.4 Provide these Services 24-hours a day, Monday through Sunday, unless otherwise agreed to by the Party in writing; and

13.1.5 The management and release of the Warranty Services fixes can be integrated with other Maintenance activities; however, from a financial perspective all costs associated with fixing the Deficiencies will be covered by the Contractor's budget. Effort spent on Warranty Services fixes shall not be counted as Maintenance Services.

13.2 Specific Warranty Services Obligations.

13.2.1 Notwithstanding the expiration of the Warranty Period(s), Contractor shall, at no additional cost to State, be obligated to remedy all Deficiencies identified during the Warranty Period(s) the System, in whole or in part;

13.2.2 During the Warranty Periods, Contractor will remedy all Deficiencies, and resolve any data corruption issues, without cost to State. These Warranty Services must cover all components of the System, including but not limited to all Software, Equipment, Facilities, Services, programs, screens, reports, subroutines, utilities, file structures, documentation, integration, conversions, or other items provided by Contractor or its Subcontractors. These Warranty Services will apply to the Software, including but not limited to any Custom Software, Equipment, Facilities, Services, screens, reports, subroutines, interfaces, conversions, utilities, file structures, Documentation, or other items proposed and delivered by Contractor specifically for this Contract;

13.2.3 Contractor must obtain and maintain, for itself, and for the benefit of State, warranty, support, and Maintenance coverage for all Software, Facilities, Hosting Services, and Equipment sufficient to enable it to perform all Services it is required to perform under this Contract; and

13.2.4 Coordinate with State all tasks related to correcting Deficiencies.

13.3 Inquiry and Assistance. Contractor shall during business days, within the times described in Exhibit B of these General Conditions of receiving an inquiry from State related to the provision of Software, Equipment, Facilities, and Services, as applicable, respond to the inquiry with the following:

13.3.1 Responses to questions relating to the System and Services, including without limitation isolating problems to the Software, Services, Facilities, Data or Equipment;

13.3.2 The development, on a best-efforts basis, of a temporary solution to or an emergency bypass of a Deficiency;

13.3.3 Corrections and repairs of errors, problems or Deficiencies with the System and Services, to the extent technically feasible; and

13.3.4 Clarification of Documentation.

13.4 Database. Within 15 days of the Effective Date and the end of each calendar quarter thereafter, Contractor shall maintain and make available online to State a database of all Change Requests, Deficiencies, and other problems reported by State under Section 13.2 of these General Conditions or known to Contractor in the Software, Equipment, Facilities, and Services. The database shall include, as a minimum, the following:

13.4.1 Date and time Contractor was notified or an inquiry is made;

13.4.2 Date and time of arrival at State Site or inquiry response;

13.4.3 Time spent for resolution of Deficiencies;

13.4.4 Description of Deficiencies;

13.4.5 Description of severity level of Deficiencies, e.g., emergency;

13.4.6 Description of Deficiency resolution;

13.4.7 Date and time of resolution; and

13.4.8 Names and titles of Staff who were dispatched to State and/or who resolved the Deficiency.

13.5 Enhancements.

13.5.1 Contractor shall produce Enhancements and associated Documentation requested by State pursuant to Section 15 and Section 13.5 of these General Conditions and the 3.6.8.4 of the RFP. Such Documentation shall be adequate to inform State of the problems and Deficiencies resolved, if any, by the Enhancements and new Functions. Contractor will provide its Confirmation that each such Enhancement has been tested and performs according to the Specifications before the Enhancement is implemented into the Software. Contractor agrees to correct corrupted Data and Deficiencies that may result from any Deficiency introduced by the Enhancement. Contractor shall absorb all costs associated with correcting such corrupted Data and Deficiencies.

13.5.2 Enhancements to correct any Deficiency shall be provided to State as part of the Services and without the need for additional Change Orders.

13.5.3 Contractor shall assist State with installing all Enhancements in accordance with a Schedule mutually agreed to by the Party.

13.5.4 If Contractor develops a new Function for its System for another state, and if Contractor has rights to make it available to State for State's use, Contractor will make available the new Function to State at no additional cost for the Function. However, Contractor may charge State to customize, configure and implement the Function for State's specific version of the System. Or State could use System Enhancement pool hours referenced in Section 7.1.2 to customize, configure and implement such Function for State. If new functionality for the System must be developed for multiple states and is core to multiple customers, Contractor will develop such functionality and allocate the cost for such functionality fairly and reasonably between State and the other states receiving or using the functionality, and State shall pay for work specifically for State as described above. Contractor must pre-test each Function and give a Confirmation that it performs according to the Specifications as modified by written agreement of the Party. Contractor agrees to correct corrupted Data that may result from any Deficiency introduced by the Function.

13.6 Deficiency Reports. Contractor shall provide to State, within 15 days of the Effective Date and the end of each calendar quarter thereafter, a list and description of all potential or actual problems, bugs, errors, and Deficiencies known by Contractor to be in any version of the System used by State, along with a schedule for resolution thereof. Deficiencies, problems, errors, and bugs causing crashes or corruption of the Data shall be reported by Contractor to State within eight hours of their becoming known to Contractor.

13.7 Continuous Improvement. Contractor shall, at no additional cost to State: (a) be proactive in identifying opportunities to implement new technologies that will improve and support the System; (b) work together with State to identify opportunities to implement new technology which may be advantageous with respect to the System; (c) maintain a level of currency, knowledge, and technology that allows State to take advantage of technological advances with respect to the System; (d) meet with State periodically to inform State of any new technology or technology trends that Contractor is developing or is otherwise aware of that could reasonably be expected to have an impact on the System; and (e) provide State, upon receipt of State's prior written approval, with the benefit of any improvements made to the technology for the System.

13.8 Performance Standards. Contractor and State will conduct tests for measuring and certifying the achievement of the Performance Standards as described in Exhibit B of these General Conditions. Contractor must implement all testing, measurement, and monitoring tools and procedures required to measure and report Contractor's performance of the System and Services against the applicable Performance Standards. Such testing, measurement, and monitoring must permit reporting at a level of detail sufficient to verify compliance with the Performance Standards and will be subject to audit by State. Contractor will provide State with information and access to all information or work product produced by such tools and procedures upon request for purposes of verification.

14. Dispute Resolution Process.

14.1 Disputes. All 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.

14.1.1 The State procurement officer shall immediately furnish a copy of the decision to Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

14.1.2 Any such decision shall be final and conclusive, unless fraudulent, or unless Contractor brings an action seeking judicial review of the decision in a circuit court of this State within the six months from the date of receipt of the decision.

14.1.3 If there is a contractual dispute, Contractor will continue performance under this Contract unless State in writing explicitly waives performance. Contractor shall comply with any decision of the State procurement officer and proceed diligently with performance of this Contract pending final resolution by a circuit court of this State of any controversy arising under, or by virtue of, this Contract, except where there has been a material breach of contract by State; provided that in any event the Contractor shall proceed diligently with the performance of this Contract where the State procurement officer has made a written determination that continuation of the work under this Contract is essential to the public health and safety.

14.2 Rights and Remedies. The Party will have the right to exercise their rights and remedies during the dispute resolution process.

15. Changes.

15.1 Changing Government Programs and Services.

15.1.1 The Party acknowledge that government programs and services supported by this Contract will be subject to continuous change during the term of this Contract. Contractor has provided for or will provide for adequate resources to reasonably accommodate such changes, subject to the Change Order process of this Section 15 of these General Conditions.

15.1.2 The Party also acknowledge that Contractor was selected, in part, because of its expertise, experience, and knowledge concerning applicable Federal and/or State laws, regulations, policies, guidelines or Standards that affect the performance of the Services and the System.

15.2 Identifying Changes. In keeping with State's reliance on Contractor's knowledge, experience, and expertise, Contractor will be responsible for identifying changes in applicable Federal or State legislative enactments, regulations, and Standards, and the impact of such changes on the performance of the Services or Deliverables or State's use of the Services or Deliverables. Contractor must timely notify State of such changes and must work with State to identify the impact of such changes on how State uses the Services or Deliverables.

15.3 Issuance of Change Requests. State may, at any time by a written Change Request, request changes within the scope of this Contract. Such changes may include, without limitation, revisions to Deliverables or Services.

15.4 Contractor Response to Changes and Change Requests. Contractor shall respond in writing with a draft Change Order within 10 days of receiving a Change Request, advising State of any cost and Schedule impacts, and the Work required. When there is a cost impact, i.e., increase or decrease in Charges, Contractor shall advise State in writing of the increase or decrease involved, including a breakdown of the number of Staff hours by level of Contractor and State personnel needed to effect this change. The Contractor Project Manager and the State Project Manager shall negotiate in good faith and in a timely manner as to the price for, the impact on the Schedule of, and Work required by any Change Request.

15.5 Modifications of Contract.

15.5.1 In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the Contractor and the State, provided that change orders shall be made in accordance with paragraph 20 herein.

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

15.5.3 Change Order. The State procurement officer. 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:

15.5.3.1 Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;

15.5.3.2 Method of shipment or packing;

15.5.3.3 Place of delivery;

15.5.3.4 Changes in the work within the scope of the Contract;
and

15.5.3.5 Changes in the Time of performance that do not alter the scope of this Contract work time of performance of the Contract that do not alter the scope of the Contract work.

15.5.4 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.

15.5.5 Claim barred after final payment. No claim by Contractor for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.

15.5.6 Other Claims not barred. In the absence of a change order, nothing under Section 15.5 shall be deemed to restrict the Contractor's right to pursue a claim under the Contract or for breach of contract

15.5.7 Tax clearance. State may, at its discretion, require Contractor to submit to State, prior to 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.

15.6 Change Orders.

15.6.1 Change Orders. Notwithstanding the procedure above, by written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the Contractor:

15.6.1.1 Changes in the work within the scope of the Contract;
and;

15.6.1.2 Changes in the time of performance of this Contract that do not alter the scope of this Contract work.

15.6.2 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.

15.6.3 Time Period for Claim. Within ten (10) days after receipt of a written change order under Section 15.6, 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.

15.6.4 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.

15.6.5 Other Claims Not Barred. In the absence of a change order, nothing in this Section 15.6 shall be deemed to restrict Contractor's right to pursue a claim under the Contract or for breach of contract.

15.7 Termination. If Contractor fails or refuses to perform its Services pursuant to a Change Order, Contractor shall be in material breach of this Contract, and State, in addition to having the right to exercise its other remedies, shall have the right to terminate the Contract for such a breach in accordance with Section 22.1 of these General Conditions.

15.8 Changes Initiated by Contractor.

15.8.1 Contractor must provide State with Notice and a description of all Contractor-initiated changes to the System and Services for any change that might affect or impact State; the Notice must be 60 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 or Services 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.

15.8.2 Except for emergencies, Contractor must notify State 60 Days prior to non-remedial Changes to the System and Services. 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.

15.8.3 Contractor shall absorb all costs associated with Contractor initiated changes to the System and Services.

15.9 Update Documents.

15.9.1 Contractor shall maintain and update as required the Documentation as a result of System and Services changes. These updates that are made to any of the Documentation that describe the process of how the System and Services are used will be

completed and provided to State within 30 Days of Implementation of the System or Service change, all other documents will be updated every three months.

15.9.2 Contractor shall send State an e-mail or other electronic broadcast, which includes a summary description of such System or Service change, at least 20 Days prior to the change going to System Testing, and at least 10 Days prior to Implementation of the change. If feasible, and when requested by State, Contractor shall provide some or all of the updated Documentation to State prior to implementing System, Services, and operational changes into Production.

15.10 Pricing for Change Requests.

15.10.1 Contractor shall perform Services on Change Requests on a fixed price basis. Contractor shall base prices for Change Requests on the reasonable number of Staff hours, fixed labor categories, plus any other reasonable expenses needed to affect the Change at rates presented in Exhibit A of these General Conditions.

15.10.2 Pricing documents submitted for approval of State must include a breakdown of costs by Staff hours and any other expenses.

15.11 State Guidance. Contractor may request guidance in administrative and programmatic matters that are necessary to Contractor's performance. State may provide such guidance as it determines appropriate. Guidance may include providing copies of regulations, statutes, standards, and policies that are to be complied with under this Contract. Contractor is not relieved by a request for guidance of any obligation to meet the requirements of this Contract. Legal services will not be provided by State to Contractor in any matters relating to Contractor's performance under this Contract. If any provision of this Contract, per se or as applied, is determined by State to be in conflict with any Federal or State law or regulation then the provision is inoperative to the extent that State determines it is in conflict with that authority and the provision is to be considered modified to the extent State determines necessary to conform with that authority.

16. Guaranty.

16.1 Submission. Within 10 Days of the Effective Date, Contractor shall provide State with a Guaranty in the form of Exhibit C of these General Conditions, executed by the ultimate parent company of its organization, [Ultimate Parent Company Name]. 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.

16.2 Failure to Comply. Failure to comply with the obligations in this Section by Contractor shall be a material breach of this Contract and 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 rights to rescind this Contract and to exercise all other available rights under this Contract, at law, and in equity.

17. Additional Rights and Remedies.

17.1 Liquidated Damages.

17.1.1 When the Contractor is given notice of delay or nonperformance as specified under Section 22.1.1 (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 Section 22.1.4 (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the Contractor. The Contractor remains liable for damages caused other than by delay.

17.1.2 The Party acknowledge and agree that Contractor could incur liquidated damages for more than one failure to perform a Service or Deliverable if Contractor fails to timely perform its obligations by each date.

17.1.3 Any liquidated damages assessed are in addition to and not in limitation of any other rights or remedies of State. The assessment of liquidated damages shall not constitute a waiver or release of any other remedy State may have under this Contract for Contractor's breach of this Contract, including without limitation, State's right to terminate this Contract, and Contractor remains liable for damages caused other than by delay and actual damages caused by Contractor's failure to perform its obligations under this Contract. However, State will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages.

17.1.4 State may offset amounts due as liquidated damages against any monies due to Contractor under this Contract. State will notify Contractor in writing of any claim for liquidated damages before the date State deducts such sums from money payable to Contractor. If any liquidated damages remain upon termination, State may bill Contractor as a separate item therefor and Contractor shall promptly make such payments.

17.2 Withholding Payments. State shall have the right to temporarily withhold or disallow all or any part of payments due to Contractor if Contractor fails to perform its obligations under this Contract without penalty or work stoppage by Contractor until Contractor cures its failure to perform.

17.3 Reductions in Payments Due. 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.

17.4 Re-Execution of Work. Contractor shall re-execute any work that fails to conform to the requirements of the Contract and shall immediately remedy any Deficiencies reported to Contractor by State at no cost to State. Should Contractor fail to comply, State reserves the right to engage in, and Contractor shall be liable for, the services of another company to perform the work. State reserves the right but shall not be limited to deducting such costs from monies due to Contractor.

17.5 Performance Standards. If the System, in whole or in part, fails to meet its Performance Standards during the term, Contractor shall modify, reconfigure, upgrade or replace the System, in whole or in part, at no cost to State in order to provide a Solution that complies with such Performance Standards.

17.6 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.

17.6.1 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 Contract No.: DHS-22-POS-0019 AG-008 103D General Conditions 5 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:

17.6.1.1 Cancel the stop performance order; or

17.6.1.2 Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

17.6.2 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:

17.6.2.1 The stop performance order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this Contract; and

17.6.2.2 Contractor asserts a claim for such an adjustment within 30 days after the end of the period of performance stoppage; provided that, if the State 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.

17.6.3 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.

17.6.4 Adjustment of Price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision (Section 3.2.2) of these General Conditions.

17.7 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.

17.8 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 Deficiency or breach or prior to assessment of a liquidated damage.

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

17.8.2.1 Contractor's detailed explanation of the cause or reasons for the cited Deficiency or breach;

17.8.2.2 Contractor's assessment or diagnosis of the cause of the cited Deficiency or breach; and

17.8.2.3 Contractor's specific proposal to cure or resolve the cited Deficiency or breach.

17.8.3 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.

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

17.8.4.1 Excuse Contractor's prior performance;

17.8.4.2 Relieve Contractor of its duty to comply with Performance Standards; or

17.8.4.3 Prohibit State from assessing additional remedies or pursuing other appropriate remedies for continued substandard performance.

17.9 Letter of Credit. Contractor shall provide State with a Letter of Credit on the Effective Date to secure its performance under this Contract, including without limitation performance of the Services in accordance with the Work Plan and providing Deliverables in accordance with the requirements. The Letter of Credit shall secure any damages, costs or expenses resulting from Contractor's breach 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. In the event of a breach, 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 amount 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, Equipment, Facilities, other Deliverables, and other Work Products and/or Services to replace those terminated as a result of Contractor's breach. State may seek or use other remedies in addition to the Letter of Credit. Failure to comply with the obligations in this Section by Contractor shall be a material breach of the Contract. See attached Exhibit D. Letter of Credit.

18. Insurance.

18.1 Liability and Auto Insurance. Contractor shall, at its sole cost and expense, obtain, and, during the term of this Contract, maintain, in full force and effect, the insurance coverage described in this Section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the State of Hawaii or meet the requirements of Section 431:8-301, HRS, if utilizing an insurance company not licensed by the State of Hawaii, and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. Contractor shall include State as an additional insured in Contractor's liability insurance policy obtained hereunder. If Contractor fails to buy and maintain the insurance coverage described in this Section 18, State may terminate this Contract under

Section 22.1 (Termination for Contractor's Default) of these General Conditions. The minimum acceptable limits shall be as indicated below:

18.1.1 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 \$1 million per occurrence/\$2 million general aggregate;

18.1.2 Business Automobile Liability (owned, hired, or non-owned) (including coverage for the Contractor's employees who rent or use their own vehicles in the course of their employment) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million bodily injury per accident, \$1 million per accident for property damage, \$1 million per person for bodily injury or \$2 million combined single limit;

18.1.3 Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million;

18.1.4 Professional Liability Errors and Omissions, with coverage of not less than \$5 million per claim/\$10 million annual aggregate; and

18.1.5 Crime Coverage of not less than \$5 million single limit per occurrence and \$10 million in the aggregate, which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty; and

18.1.6 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.

18.2 Worker's Compensation/Employers Liability Coverage. Prior to performing Services under this Contract, Contractor shall provide or purchase worker's compensation coverage for its employees and shall maintain such coverage during the course of this Contract. State will not be responsible for payment of premiums or for any other claim or benefit for Contractor, or any Subcontractor or employee of Contractor, which might arise under applicable laws during the performance of duties and Services under this Contract. However, should Contractor fail to secure insurance coverage or fail to pay premiums on behalf of its employees, State may deduct the amount of premiums and any penalties owing from the amounts payable to Contractor under this Contract and transmit the same to the responsible State agency. Such worker's compensation policy shall be for an amount in accordance with statutory limits,

and employer's liability coverage shall be as follows: (1) each accident -\$1 million; (2) disease - \$1 million per employee with a \$1 million policy limit; and (3) \$1 million aggregate.

18.3 Subcontractors. Contractor shall include all Subcontractors as insured under all required insurance policies or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

18.4 Premiums. Premiums on all insurance policies shall be paid by Contractor or its Subcontractors. Such liability insurance policies provided for State pursuant to this Section shall expressly provide that State be named as additional insured, and that the insurance shall not be revoked by the insurer until 30 days' Notice of intended revocation shall have first been given to State by such insurer.

18.5 Expiration or Cancellation. If the scheduled expiration date of the liability insurance is earlier than the expiration date of the time of performance under this Contract, Contractor, upon renewal of the policy shall promptly provide to State an updated liability certificate of insurance. Contractor's insurance policies shall not be canceled, limited in scope, or non-renewed in scope of coverage without State's written consent. Contractor shall provide prompt Notice to State if any of the insurance policies will be cancelled, limited in scope, or not be renewed upon expiration to the extent affecting Contractor's compliance with the requirements of this Contract. Written notification shall be sent to the State procurement officer, and Contractor shall have replacement insurance policy(ies) in place that satisfy the requirements set forth in this Section 18.

18.6 Insurance Documents. Contractor shall furnish to State copies of certificates of all required insurance on the Effective Date, and copies of renewal certificates of all required insurance within 30 days after the renewal date. Such insurance must be kept in effect and the certificate(s) on deposit with State during the entire term of this Contract. Upon request by State, Contractor shall furnish a copy of the policy or policies. Contractor shall submit the certificates of insurance to the State Project Manager at an address designated in writing by State. These certificates of insurance must expressly indicate compliance with each, and every insurance requirement specified in this Section, and shall be executed by a duly authorized representative of each insurer. The certificate of insurance for each required policy shall reference the State Contract Number for this Contract. Failure to provide these documents and keep in force the insurance in this Section shall be regarded as a material default under this Contract and grounds for immediate termination or suspension of this Contract by State, and State shall also be entitled to exercise any or all of the remedies provided in this Contract for a default by Contractor. Contractor is not required to submit to State copies of certificates of insurance for personal automobile insurance required of the Contractor's employees and volunteers under this Contract. Each insurance policy required by this Contract shall contain the following clauses, which shall also be reflected on the certificate of insurance:

18.6.1 "The State of Hawaii is an additional insured with respect to operations performed for the State of Hawaii."

18.6.2 “Any insurance maintained by the State of Hawaii shall apply in excess of, and not contribute with, insurance provided by this policy.”

18.6.3 “This insurance shall not be cancelled, limited in scope of coverage or non-renewed until after 30 calendar days advance written notice has been given to the State of Hawaii, Department of Human Services.”

18.7 Increased Coverage. State is to be notified by Contractor immediately if any aggregate insurance limit as required in this Contract is exceeded. In such event, additional coverage must be purchased to meet requirements.

18.8 Cross Liability-.

All insurance provided by Contractor under this Contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross liability-) provision.

18.9 General. Contractor shall maintain insurance acceptable to State in full force and effect throughout the term of this Contract. By requiring insurance, the State does not represent that the coverage and limits specified will be adequate to protect the Contractor. Such coverage and limits shall not be construed to limit Contractor’s liability hereunder, to fulfill the indemnification provisions and requirements of this Contract, or to relieve the Contractor from liability in excess of the required coverage and limits and shall not limit the indemnities and reimbursements granted to State in this Contract.

18.10 Subrogation. Contractor agrees to waive all rights of subrogation against State, its boards, agencies, departments, officers, employees, agents, and volunteers for losses arising from services performed by Contractor under this Contract.

18.11 Extended Coverage. For Professional Liability Errors and Omissions coverage under Section 18.1.4 of these General Conditions, Contractor shall continue such coverage for at least five years beyond the expiration or termination of this Contract. The Retroactive Date must be shown and must be before the Effective Date or the beginning of work on this Contract, whichever is earlier. If coverage is canceled or non-renewed, and not replaced with another claims made policy form with a Retroactive Date prior to the Effective Date, Contractor must purchase “extended reporting” coverage for a minimum of five years after expiration or termination of this Contract, whichever is earlier.

18.12 Employees and Volunteers. Contractor is responsible for securing all employee-related insurance coverage for Contractor and 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. Insurance required of Contractor under this Contract shall include coverage for the acts and omissions of Contractor’s employees and volunteers.

19. Data and Information Security.

19.1 General Requirements.

19.1.1 All information, data, or other material provided by Contractor to State shall be subject to the Hawaii Uniform Information Practices Act, chapter 92F, HRS.

19.1.2 Contractor and its Subcontractors will comply with any policy, rule, requirement of State, and/or all other applicable State and Federal laws relating to data and information privacy or confidentiality and the safeguarding or disclosure of such data and information as it relates to the Services performed by Contractor or the information received by the Contractor under this Contract, including without limitation the terms of the Response.

19.1.3 The Contractor and any subcontractors shall maintain the files, books, and record. 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.

19.1.4 Records Retention. 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. 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. Notwithstanding the above, State may request Contractor to return records to State or request that Contractor destroy records pursuant to chapter 487R, HRS, at any time after expiration or termination of this Contract.

19.1.5 Audit. State reserves the right to monitor, audit or investigate Contractor's use of any and all Confidential Information, Proprietary Information, Personal Information, and Beneficiary Information collected, used, or acquired by Contractor under this Contract. Such monitoring, auditing or investigative activities may include without limitation the System performance reporting and billing databases.

19.1.6 Nondisclosure of Other State Information. The use or disclosure by Contractor of any State information not necessary for, or directly connected with, the performance of Contractor's responsibility with respect to Services or Deliverables is prohibited, except upon the express written consent of State. Contractor shall also protect the physical security and restrict any access to personal or other data of State in Contractor's possession or control or used by Contractor in the performance of this Contract, which shall include, but is not limited to, State's public records, documents, files, software, equipment or systems.

19.1.7 Survival. The provisions of this Section 19 shall remain in effect following the termination or expiration of this Contract.

19.1.8 Security and Data Transfers.

19.1.8.1 Contractor will ensure the physical and Data security associated with computer equipment — including but not limited to desktops, notebooks, and other portable devices — used in connection with this Contract. Contractor will also assure that any media or mechanism used to store or transfer Data to or from State includes industry standard security mechanisms such as continually up-to-date malware protection and encryption.

19.1.8.2 Contractor will ensure media or Data files transferred to State are virus and spyware free. At the conclusion of this Contract and after successful delivery of the Data to State, Contractor shall securely delete Data (including archival backups) from Contractor's equipment that contains individually identifiable records, in accordance with standards adopted by State.

19.1.8.3 Contractor represents and warrants that it has implemented, and it shall maintain during the term of this Contract industry-standard administrative, technical, and physical safeguards to: (i) ensure the security and confidentiality of State Data; (ii) protect against any anticipated security threats or hazards to the security or integrity of the State Data; and (iii) protect against unauthorized access to or use of State Data. Such measures include, as applicable: (1) access controls on information systems, including controls to authenticate and permit access to State Data only to authorized individuals and controls to prevent Contractor employees from providing State Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of electronic State Data while in transit from Contractor networks to external networks; (4) industry-standard measures to store in a secure fashion all State Data which shall include multiple levels of authentication; (5) dual control procedures, segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to State Data; (6) industry-standard measures to ensure that State Data shall not be altered or corrupted without the prior written consent of State; (7) industry-standard measures to protect against destruction, loss or damage of State Data due to potential environmental hazards, such as fire and water damage; (8) Staff training to implement the information security measures; and (9) monitoring of the security of any portions of Contractor systems that are used in the provision of the services against intrusion on a 24 hour a day basis.

19.2 Confidential Information and Proprietary Information Protection Obligations.

19.2.1 Access and Protection. During the term of this Contract, Contractor and State will have access to and become acquainted with each Party's Confidential Information and Proprietary Information. All material given to or made available to the Contractor by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the Contractor, and shall not be disclosed to any individual or organization without the prior written approval of the State. b. All information, data, or other

material provided by the Contractor to the State shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

19.2.2 Except for disclosure and use pursuant to chapter 92F, HRS and this Section, State and Contractor, and each of their officers, employees, subcontractors, and agents, shall, subject to State laws and regulations and in accordance with this section, maintain (a) all Confidential Information of the other Party in confidence, and (b) all Proprietary Information in the same manner as it protects the confidentiality of its own proprietary information of like kind, but in no event with less than reasonable care. Neither Party will at any time use, publish, reproduce or disclose any Confidential Information or Proprietary Information, except to authorized employees, subcontractors, and agents requiring such information under confidentiality requirements no less restrictive than this Section 19.2, as authorized in writing by the other Party, as otherwise specifically permitted herein, or to perform its obligations as authorized hereunder. Both Party shall take all steps necessary, including without limitation oral and written instructions to all staff to safeguard, in accordance with applicable Federal and State laws and regulations, and this Section 19, to protect the other Party's Confidential Information and Proprietary Information against unauthorized disclosure, reproduction, publication or use, and to satisfy their obligations under this Contract. Except for disclosures pursuant to chapter 92F, HRS, Contractor shall only release such State Confidential Information or State Proprietary Information to employees or agents, Subcontractors' employees or agents, or contractors who have executed an agreement to be bound by the same terms as specified in Section 19 with respect to the Proprietary Information and Confidential Information.

19.2.3 Public Record. Notwithstanding the above, Contractor agrees to comply with section 3-122-58, HAR. Any specific information that is claimed by Contractor to be Proprietary Information or Confidential Information must be clearly identified as such by Contractor. To the extent consistent with chapter 92F, HRS, and all other applicable State and Federal laws relating to data privacy or confidentiality, State will maintain the confidentiality of all such information marked Proprietary Information or Confidential Information. If a request is made to view Contractor's Proprietary Information or Confidential Information, State will notify Contractor of the request and of the date that any such records may be released in accordance with section 3-122-58, HAR.

19.2.4 Unauthorized Disclosures or Uses.

19.2.4.1 Contractor shall immediately report to State any and all unauthorized disclosures or uses of State's Confidential Information or Proprietary Information of which it or its Staff is aware or has knowledge. Contractor acknowledges that any publication or disclosure of State's Confidential Information or Proprietary Information to others may cause immediate and irreparable harm to State. If Contractor should publish or disclose such Confidential Information or Proprietary Information to others without authorization, State shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period.

19.2.4.2 State will immediately report to Contractor any and all unauthorized disclosures or uses of Contractor's Confidential Information or Proprietary Information of which State is aware or has knowledge.

19.3 Personal Information Protection Obligations.

19.3.1 Confidentiality of Personal Information.

19.3.1.1 All material given to or made available to Contractor by State by virtue of this Contract which qualifies as personal information as defined under this Contract, shall be safeguarded by Contractor, and shall not be disclosed without the prior written approval of the State.

19.3.1.2 Contractor agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.

19.3.1.3 Contractor agrees to implement appropriate Technological safeguards that are acceptable to the State to reduce the risk of unauthorized access to personal information.

19.3.1.4 Contractor shall report to State in a prompt and complete manner any security breaches involving personal information.

19.3.1.5 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 Section 19.

19.3.1.6 Contractor shall complete and retain a log of all disclosures made of personal information received from State, or personal information created or received by Contractor on behalf of State.

19.3.2 Security Awareness Training and Confidentiality Agreements.

19.3.2.1 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.

19.3.2.2 Contractor certifies that confidentiality agreements have been signed by all employees who will have access to personal information acknowledging that:

(A) Personal information collected, used, or maintained by Contractor will be treated as confidential;

(B) Access to personal information will be allowed only as necessary to perform the Contract; and

(C) Use of personal information will be restricted to uses consistent with the services subject to this Contract.

19.3.2.3 Termination for Cause. In addition to any other remedies provided for by this Contract, if State learns of a material breach by Contractor of this Section 19.3, State may, at its sole discretion:

(A) Provide an opportunity for Contractor to cure the breach or end the violation; and/or

(B) Immediately terminate this Contract.

19.3.2.4 In either instance, Contractor and State shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

19.4 Beneficiary Protection Obligations

19.4.1 Contractor understands that the use and disclosure of Beneficiary Information is restricted to purposes directly connected with the administration of the Comprehensive Child Welfare Information System engagement and agrees to guard the confidentiality of Beneficiary Information as required by law.

19.4.2 Contractor shall implement a secure electronic mail (email) encryption solution to ensure confidentiality, integrity, and authenticity of email communications that contain information relating to clients.

19.4.3 Contractor will ensure the System and Services will only share Data between State agencies, providers, and other Party that are authorized to receive such Data, in compliance with all applicable State and Federal laws and regulations unless otherwise agreed to by State in writing.

19.5 Security Requirements.

19.5.1 Contractor shall comply and shall cause its Staff that are providing services at State's facilities or that have access to any Data and/or networks of State, or Staff that State permits to perform Services at a location other than its facilities, to comply with and conform in all respects with physical, fire, computer system, network, or other State security requirements.

19.5.2 The System and Contractor's Project team Staff must comply with all applicable Federal and State security requirements.

20. Indemnifications.

20.1 Intellectual Property.

20.1.1 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 attorney's 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.

20.2 General.

20.2.1 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.

20.2.2 Cost of Litigation. In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the Contractor in connection with this Contract, the Contractor shall pay all costs and expenses incurred by or imposed on the State, including attorneys' fees and expenses from any:

20.2.2.1 claim or action caused by or arising from the acts or omissions or willful misconduct of Contractor, its officers, employees, agents, or Subcontractors, including without limitation for property damage, bodily injury or death;

20.2.2.2 breach or alleged breach of its obligations in Section 19 of these General Conditions;

20.2.2.3 claim, action, suit or judgment to the extent caused by or arising from Contractor's failure to provide and maintain reasonable administrative, physical, and technical safeguards consistent with applicable industry standards to appropriately protect the confidentiality and integrity of State Data; and

20.2.2.4 violation of or noncompliance with any Federal or State laws, rules, regulations, policies, Standards or guidelines by Contractor or the System, including but not limited to Federally imposed sanctions against State for any failures during design, implementation, maintenance, operations, or modification of the System in meeting Federal requirements, that were caused by Contractor's or any Subcontractor's default, negligence or willful misconduct.

20.2.3 State shall promptly give Contractor notice of such claim. Contractor shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. Contractor shall notify its insurance company and State within 10 days of receiving any claim for damages, notice of claims, pre-claims, or service of judgments or claims, for any act or omissions in the performance of this Contract.

20.2.4 State may participate in the defense of any such action if principles of government or public law are involved or State chooses to participate in its discretion. Neither Party to this Contract can commit the other Party to make any payments or to make any admissions without the express written consent of the other Party.

21. Damages Limitations.

21.1 State's Limitation of Liability. IN NO EVENT SHALL STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT, EXCEED THE MAXIMUM AMOUNT.

22. Termination.

22.1 Termination for Contractor's Default.

22.1.1 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.

22.1.2 Contractor's Duties. Notwithstanding termination of this Contract and subject to any directions from the State procurement officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which State has an interest.

22.1.3 Compensation. Payment for completed goods and services delivered and accepted by State shall be at the price set forth in this Contract subject to the terms of this Section and State's exercise of its rights and remedies. Payment for the protection and preservation of property shall be in an amount agreed upon by Contractor and the State procurement officer. If the Party fail to agree, the State procurement officer shall set an amount subject to Contractor's rights under chapter 3-126, HAR. State may withhold from amounts due Contractor such sums as the State procurement officer deems to be necessary to protect State against loss because of outstanding liens or claims, and to reimburse State for the excess costs expected to be incurred by State in procuring similar goods and services.

22.1.4 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.

22.1.5 Erroneous Termination for Default. If, after notice of termination of the Contractor's right to proceed under this Section, 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 Section 22.1.4, "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 Section 22.6.

22.1.6 Additional Rights and Remedies. The rights and remedies provided in this Section are in addition to any other rights and remedies provided by law or under this Contract.

22.2 Termination for Rejection of Deliverables. If Contractor fails to correct Deficiencies in a Deliverable or Service pursuant to Section 7.2.1 of these General Conditions, State shall have the right to 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.

22.3 Termination for Conflict of Interest. State may terminate this Contract under Section 22.1 (Termination for Contractor's Default) of these General Conditions by Notice to Contractor if State determines, after due notice and examination, that Contractor has violated any laws regarding conflicts of interest, ethics in public acquisitions and procurement, and performance of contracts.

22.4 Termination Remedies.

22.4.1 In the event of termination of this Contract by State under any of Sections 22.1-22.3 and Section 22.9, State shall, in addition to its other available remedies, have the right to procure the Services and Deliverables that are the subject of this Contract on the open market.

22.4.2 Subject to the provisions of Section 21.2, Contractor shall be liable for all damages, including, but not limited to: (i) the cost difference for the period which would have remained in the Contract term if not for termination between the original Contract Charges for the Services and Deliverables and the replacement costs of such Services and Deliverables acquired from another vendor; and (ii) if applicable, all administrative costs related to the replacement of this Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, and staff time costs.

22.5 Termination for Convenience.

22.5.1 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.

22.5.2 Invocation of Section 22.6 (Termination for Withdrawal of Authority), or Section 22.7 (Termination for Non-allocation of Funds) of these General Conditions, shall be deemed a termination for convenience.

22.5.3 Contractor shall wind down and cease its Services as quickly and efficiently as reasonably possible, without performing unnecessary Services or activities and by minimizing negative effects on State from such winding down and cessation of Services. If this Contract is so terminated, State shall be liable only for payment in accordance with the terms of this Contract for Services satisfactorily rendered prior to the effective date of termination.

22.5.4 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.

22.5.5 Right to goods and work product. The State procurement officer may require Contractor to transfer title and deliver to State in the manner and to the extent directed by the State procurement officer:

22.5.5.1 Any completed goods or Work Product; and

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

22.5.6 Contractor shall, upon direction of the State procurement officer, protect and preserve property in the possession of Contractor in which State has an interest. If

the State procurement officer does not exercise this right, Contractor shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that State has breached the Contract by exercise of the termination for convenience provision.

22.5.7 Compensation.

22.5.7.1 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 Contractor fails to file a termination claim within one year from the effective date of termination, the State procurement officer may pay Contractor, if at all, an amount set in accordance with subsection 22.6.7.3 below.

22.5.7.2 The State procurement officer and 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 State, the proceeds of any sales of goods and manufacturing materials under subparagraph 22.5.7 above, and the Contract price of the performance not terminated.

22.5.7.3 Absent complete agreement under Section 22.5.7, the State procurement officer shall pay Contractor the following amounts, provided payments agreed to under subsection 22.5.7.3 shall not duplicate payments under this subparagraph for the following:

- (A) Contract prices for goods or Services that have received Acceptance 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 goods or services that have received Acceptance; provided, however, that if it appears that 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 this Section. These costs must not include costs paid in accordance with subsection 22.5.7.3 (B) above;
- (D) The reasonable settlement costs of 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 this 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 Contractor under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of Contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subsection 22.5.7.3, and the contract price of performance not terminated.

22.5.7.4 Costs claimed, agreed to, or established under subsections 22.5.7.2-.3 above shall be in accordance with chapter 3-123 (Cost Principles), HAR.

22.6 Termination for Withdrawal of Authority. In the event that the authority of State and all other State agencies to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, State may terminate this Contract under Section 22.6 (Termination for Convenience) of these General Conditions, in whole or in part. This Section shall not be construed so as to permit State to terminate this Contract in order to acquire similar Services from a third party.

22.7 Termination for Non-allocation of Funds. If funds are not allocated to continue this Contract in any future period as described in Section 3.7 of these General Conditions, State may terminate this Contract under Section 22.5 (Termination for Convenience) of these General Conditions. State will not be obligated to pay any further Charges for Services or Charges for such future period, but State shall make payments for Services and Deliverables as provided in Section 22.7 of these General Conditions, subject to State's availability of funding therefor. State agrees to notify Contractor of such non-allocation at the earliest possible time. No penalty shall accrue to State in the event this Section shall be exercised.

22.8 Termination for Bankruptcy or Insolvency. If Contractor shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or its assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of the rights or creditors, State may, at its option, terminate this Contract. In the event State elects to terminate a Contract under this provision it shall do so by sending Notice of termination to Contractor. The date of termination shall be deemed to be the date such notice is mailed to Contractor, unless otherwise specified.

22.9 Termination and Expiration Procedure.

22.9.1 Upon termination or expiration of this Contract, State, in addition to any other rights provided in this Contract, may require Contractor to deliver to State any Property, including but not limited to Deliverables and Data, for such part of this Contract as has been terminated.

22.9.2 After receipt of a Notice of termination or expiration, as applicable, and except as otherwise directed by State, Contractor shall:

22.9.2.1 Stop work under this Contract on the date, and to the extent specified, in the Notice;

22.9.2.2 Place no further orders or subcontracts for materials, Services, or Facilities except as may be necessary for completion of such portion of the work under this Contract that is not terminated;

22.9.2.3 As soon as practicable, but in no event longer than 30 days after termination, terminate its orders and subcontracts related to the work which has been terminated, and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of State to the extent required, which approval or ratification shall be final for the purpose of this Section;

22.9.2.4 Complete performance of such part of this Contract as shall not have been terminated by State;

22.9.2.5 Take such action as may be necessary, or as the State Project Manager may direct, for the protection and preservation of the Property related to this Contract which is in the possession of Contractor and in which State has an interest;

22.9.2.6 Transfer title to State and deliver in the manner, at the times, and to the extent directed by the State Project Manager, any Property which is required to be furnished to State and which has been accepted or requested by State; and

22.9.2.7 Provide written certification to State that Contractor has surrendered to State all such Property.

22.9.3 Upon the expiration or the termination of this Contract for any reason, State's rights to Services and/or Data will be as follows:

22.9.3.1 Upon expiration of the Contract or Contractor's receipt of notice of termination of the Contract by State, Contractor will in accordance with instructions provided by State provide any turnover assistance Services or data necessary to enable State or its designee to effectively close out the Contract and move the work to another vendor or to perform the work by itself. Within ten days of receipt of the Notice of termination or ten days prior to and again on expiration or termination of the Contract, Contractor shall provide, in machine readable form, a then-up-to-date, usable copy of the Data in a format specified by State and a copy of all documentation needed by State to utilize the Data. Contractor will ensure that all consents or approvals to allow Contractor and Subcontractors to provide the assistance required following termination or expiration have been obtained, on a contingent basis, in advance and will be provided by the applicable third Party at no cost or delay to State.

22.9.3.2 State shall pay the Contractor for any resources utilized in performing such transition assistance at the rates in Exhibit A of these General Conditions. If State terminates the Project or this Contract under Sections 22.1, 22.2, 22.3, or Section 22.9, then

State will be entitled to offset the cost of paying the Contractor for the additional resources the Contractor utilized in providing transition assistance with any damages State may have otherwise accrued as a result of such termination.

23. Other Conditions.

23.1 Antitrust Claims. State and Contractor recognize that, in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, 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 State under an escalation clause.

23.2 Assignment. Contractor may not assign or transfer this Contract or any of its rights hereunder, or delegate any of its duties hereunder, without the prior written consent of State. In addition, State shall have the right to exercise any of its remedies in this Contract, at law and in equity for any attempted assignment, transfer, change in Control or delegation in contravention of this Section, including but not limited to recovery of its damages resulting therefrom, and termination or rescission of this Contract. This Contract shall inure to the benefit of and be binding on the Party hereto and their permitted successors and assigns.

23.2.1 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

23.2.2 Any permitted assignment, transfer, delegation or change in Control shall not operate to relieve Contractor of any of its duties and obligations hereunder, nor shall such assignment, transfer, delegation or change in Control affect any remedies available to State that may arise from any breach of the provisions of this Contract or representations, or warranties made herein including but not limited to, rights of setoff. State may assign or transfer this Contract or any of its rights hereunder, or delegate any of its duties hereunder, without the consent of Contractor. Any attempted assignment, transfer, change of Control or delegation in contravention of this Section of this Contract shall be null and void.

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

23.2.3.1 The Assignee assumes all of Contractor's obligations;

23.2.3.2 Contractor remains liable for all obligations under this Contract but waives all rights under this Contract as against State; and

23.2.3.3 Contractor shall continue to furnish, and the Assignee shall also furnish, all required bonds.

23.2.4 Change of Name. When Contractor asks to change the name in which it holds this Contract with State, the State procurement officer (hereinafter referred to as the “Agency procurement officer”) shall, upon receipt of a document acceptable or satisfactory to the State procurement officer of the purchasing agency indicating such change of name (for example, an amendment to Contractor’s articles of incorporation), enter into an amendment to this Contract with Contractor to effect such a change of name. The amendment to this Contract changing Contractor’s name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

23.2.5 Reports. All assignment contracts and amendments to this Contract effecting changes of Contractor’s name or novations hereunder shall be reported to the chief procurement officer as defined in section 103D-203(a), HRS, within 30 days of the date that the assignment contract or amendment becomes effective.

23.2.6 Actions Affecting More than one Purchasing Agency. Notwithstanding the provisions of Sections 23.2.2 through 23.2.5 herein, when Contractor holds contracts with more than one purchasing agency of State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the chief procurement officer’s office.

23.3 Attorneys’ Fees and Costs. In case State shall, without any fault on its part, be made a party to any litigation commenced by or against Contractor in connection with this Contract, Contractor shall pay all costs and expenses incurred by or imposed on State, including attorneys’ fees. In addition, in the event that State should prevail in any legal action arising out of the performance or non-performance of this Contract, Contractor shall pay, in addition to any damages, all expenses of such action including reasonable attorney’s fees and costs. The term ‘legal action’ shall be deemed to include administrative proceedings of all kinds, as well as all actions at law or equity.

23.4 Authority. Neither Party shall have authority to bind, obligate or commit the other Party by any representation or promise without the prior written approval of the other Party.

23.5 Binding Effect. Each Party agrees that this Contract binds it and each of its employees, agents, independent contractors, and representatives.

23.6 Claims Based on the State Procurement Officer’s Actions or Omissions.

23.6.1 Changes within Scope. If any action or omission on the part of the State procurement officer (which term includes the designee of such officer for purposes of this Section 23.6) requiring performance changes within the scope of this Contract constitutes the

basis for a claim by Contractor for additional compensation, damages, or an extension of time for completion, Contractor shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, Contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

23.6.1.1 Written notice required. Contractor shall give Notice to the State procurement officer:

23.6.1.1.1 Prior to the commencement of the performance involved, if at that time Contractor knows of the occurrence of such action or omission;

23.6.1.1.2 Within 30 days after Contractor knows of the occurrence of such action or omission, if Contractor did not have such knowledge prior to the commencement of the performance; or

23.6.1.1.3 Within such further time as may be allowed by State procurement officer in writing.

23.6.1.2 Notice Content. This Notice shall state that Contractor regards the act or omission as a reason which may entitle Contractor to additional compensation, damages, or an extension of time. The State 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 State procurement officer;

23.6.1.3 Basis must be Explained. The Notice required by Section 23.6.1.1 herein describes as clearly as practicable at the time the reasons why Contractor believes that additional compensation, damages, or an extension of time may be remedies to which Contractor is entitled; and

23.6.1.4 Claim must be Justified. Contractor must maintain and, upon request, make available to the State procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to State, justifying the claimed additional costs or an extension of time in connection with such changes.

23.6.2 Contractor not excused. Nothing herein contained, however, shall excuse 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.

23.6.3 Price adjustment. Any adjustment in the price made pursuant to this Section shall be determined in accordance with the price adjustment provision of this contract Section 3.2 of these General Conditions.

23.7 Compliance With Civil Rights Laws. During the performance of this Contract, Contractor shall comply with all federal and applicable state nondiscrimination laws,

including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. § 12101, *et seq.*; the Americans with Disabilities Act (ADA); and laws relating to fair employment practices, to the full extent applicable. Contractor shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by Contractor under this Contract. Contractor further agrees to include this provision in all subcontracts. In the event of Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, policy, or the provisions of this Section, this Contract may be rescinded, canceled, or terminated in whole or in part by State under Section 22.1 (Termination for Contractor's Default), and Contractor may be declared ineligible for further contracts with State.

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

23.8 Compliance with Health and Safety Related Laws. Contractor will at all times comply with all applicable worker's compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. State shall not be responsible in any way for claims filed by Contractor or its employees for services performed under the terms of this Contract.

23.9 Conflicts Between Contract and Procurement Rules; Conflict Between Documents; Order of Precedence. In the event of a conflict between this Contract and the State procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference. In the event of a conflict between or among any provisions of this Contract, 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. In the event that there is a conflict between the documents comprising this Contract, the following order of precedence shall apply:

23.9.1 Applicable federal and state laws, regulations and policies;

23.9.2 The terms and conditions in the body of this Contract;

23.9.3 Change Orders;

23.9.4 Deliverables, subject to Section 7.6 of these General Conditions;

23.9.5 Exhibit A (Charges, Payments, Deliverables, and Standards) of these General Conditions;

23.9.6 Exhibit B (Performance Standards and Liquidated Damages) of these General Conditions;

23.9.7 Exhibit C (Guaranty) of these General Conditions;

23.9.8 Exhibit D (Letter of Credit) of these General Conditions;

23.9.9 The Specifications;

23.9.10 The Work Plan;

23.9.11 The RFP; and

23.9.12 The Response.

23.10 Conflicts of Interest.

23.10.1 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.

23.10.2 In the event that Contractor or its Staff hereafter acquires such a conflict of interest, it shall immediately disclose such interest to State and take action immediately to eliminate the conflict or to withdraw from the Contract, as State may require.

23.10.3 During the term of this Contract, Contractor shall not engage in any business or personal activities or practices or maintain any relationships, including without limitation with Staff who have any such interests, which conflict in any way with Contractor fully performing its obligations under this Contract.

23.10.4 Additionally, Contractor acknowledges that, in governmental contracting, even the appearance of a conflict of interest is harmful to the interest of State. Thus, Contractor agrees to refrain from any practices, activities or relationships that could reasonably be considered to be in conflict with Contractor's fully performing his/her obligations to State under the terms of this Contract, without the prior written approval of State.

23.10.5 In the event that Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, Contractor shall submit to State a full disclosure statement setting forth the relevant details for State's consideration and direction.

23.11 Contingent Fees, Gifts, and Gratuities.

23.11.1 Contractor represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any contract or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of Contractor. Contractor further represents that it has not offered or given, and warrants that it shall not offer or give, to any employee, agent or representative of State any gratuity or inducement with a view toward securing any business from State or any part thereof or influencing such person with respect to terms, conditions, or performance of any business dealing with or from State or any part thereof.

23.11.2 Any breach of these representations and warranties shall be considered a material default of this Contract and shall allow State to (A) terminate the Contract immediately at its sole discretion and allow State to avail itself of any and all remedies either at

law or in equity; (B) either annul this Contract without liability to State, or, in State's discretion, deduct from payments due to Contractor; and (C) otherwise recover from Contractor, the full amount of such commission, percentage, brokerage, or contingent fee.

23.11.3 Contractor shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Contract.

23.12 Contractor Certification Regarding Ethics. Contractor certifies that Contractor is now, and shall remain, in compliance with section 103D-101, HRS, Requirements of Ethical Public Procurement, and acknowledges that it is aware of chapter 84, HRS, Standards of Conducts, as applicable throughout the term of this Contract.

23.13 Contractor Commitments, Warranties, and Representations. Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this Contract. For purposes of this Section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its response to the solicitation resulting in this Contract or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its bid used to effect sale to State.

23.14 Cooperation. The Party agree to fully cooperate with each other in connection with the performance of their respective obligations and covenants under this Contract.

23.15 Counterparts. This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each Party, for all purposes.

23.16 Debarment and Suspension. Contractor certifies that, as of the Effective Date, Contractor nor Contractor's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds or from any State programs. Contractor also certifies and warrants that it shall not contract with a Subcontractor that is so debarred or suspended. Contractor also shall include the above requirement in any and all subcontracts into which it enters. Contractor shall immediately notify State if, during the term of this Contract, Contractor becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal or State department or agency from participating in transactions. State may immediately terminate this Contract by providing Contractor Notice if Contractor becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal or State department or agency from participating in transactions during the term hereof.

23.17 Drug-Free Workplace. Contractor shall maintain workplaces as free as possible from the dangerous effects of alcohol and other drugs.

23.18 Entire Agreement; Acknowledgement of Understanding. 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.

23.19 Force Majeure. Neither Contractor nor State shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such Party and without fault or negligence of such Party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other Party or third Party (except Subcontractors). In case of such an event, the period for the performance of the act may be extended for a period equivalent to the period of the delay.

23.20 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.

23.21 Headings. The headings throughout this Contract are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Contract.

23.22 Independent Status of Contractor.

23.22.1 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.

23.22.2 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.

23.23 Legal Compliance. Contractor shall comply with all applicable Federal, State, and County laws, ordinances, codes, rules, and regulations, including any licensing requirements and standards necessary in the performance of this Contract. Any provision of this Contract which is in conflict with the Federal laws, regulations, or guidance is hereby amended to conform to the provisions of those laws, regulations, and policy. Such amendment of this Contract will be effective on the effective date of the laws, regulations or guidance necessitating it, and will be binding on the Party even though such amendment may not have been reduced to writing and formally agreed upon and executed by the Party.

23.24 Lobbying Activities and Campaign Contributions.

23.24.1 Contractor shall comply with all certification and disclosure requirements prescribed by Section 319, Public Law 101-121 (31 U.S.C. § 1352) and any implementing regulations. No Federal funds under this agreement may be used to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, continuation, renewal, amendments other than Federal appropriated funds.

23.24.2 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.

23.25 Notice of Delay. When Contractor has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, Contractor shall, within five business days, give Notice thereof, including all relevant information with respect thereto, to State.

23.26 Notices.

23.26.1 Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective if and only if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class-, postage prepaid, certified mail, return receipt requested, via facsimile or by electronic mail (with confirmation of receipt), to the Party at the addresses and fax number, and e-mail addresses provided in this Section.

To Contractor at:

Mailing Address

Telephone:

Fax:

E-mail:

To State at:

Telephone:

Fax:

E-mail:

23.26.2 Notices shall be effective upon receipt or four business days after mailing, whichever is earlier, unless specified otherwise by relevant federal or state laws. The Notice address as provided herein may be changed by Notice given as provided above.

23.27 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.

23.28 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.

23.29 Remedies. Except for remedies designated specifically as exclusive, no remedy conferred by any of the specific provisions of this Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either Party shall not constitute a waiver of the right to pursue other available remedies.

23.30 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.

23.31 Sovereign Immunity. The Party expressly agree that no provision of this Contract is in any way intended to constitute a waiver by State or the State of Hawaii of any immunities from suit or from liability that State or the State of Hawaii may have by operation of law, and, by entering into this Contract with Contractor, State does not waive its sovereign immunities or defenses as provided by law.

23.32 Subcontractors.

23.32.1 Contractor may, with prior written permission from the State Project Manager, enter into subcontracts with a third party for its performance of any part of Contractor's duties and obligations to the benefit of Contractor and State as long as all the requirements of Section 23.2 of these General Conditions are satisfied, and Subcontractors provide the Services in a manner consistent with the minimum standards specified. Any approved-Subcontractor providing a Service, a Deliverable or a Change Order may be rescinded in State's sole discretion. State reserves the right to inspect all subcontract and provider agreements at any time during the contract period.

23.32.2 Contractor is responsible and liable for the proper performance of, payment to, and the quality of all work performed under this Contract by any and all Subcontractors and of persons directly or indirectly employed by such Subcontractors. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to State for any breach in the performance of Contractor's duties. In addition, Contractor's use of any Subcontractor shall not cause the loss of any warranty from Contractor. All subcontracts will be made in writing and copies provided to State upon request. For purposes of this Contract, Contractor agrees to indemnify, defend, and hold State harmless from and against any and all claims, actions, losses, liabilities, damages, costs, and expenses (including reasonable attorney fees) arising out of or related to acts or omissions of Contractor's Subcontractors, their agents, or employees. At State's request, Contractor shall forward copies of subcontracts and fiscal, programmatic, and other material pertaining to any and all subcontracts.

23.32.3 Contractor shall provide State immediate Notice in writing by registered or certified mail of any action or suit filed against it by any Subcontractor or provider, and prompt Notice of any claim made against any Contractor which may result in litigation related in any way to this Contract with State.

23.32.4 Contractor shall notify State at least 15 days prior to adding or deleting provider or Subcontractor agreements or making any change to any provider or Subcontractor agreements which may materially affect the Contractor's ability to fulfill the terms of this Contract.

23.32.5 All agreements or contracts with the Subcontractors or providers shall be finalized and fully executed within 30 days of the Contract award.

23.32.6 All subcontracts shall require that the Subcontractors and providers agree to comply with the confidentiality requirements stated in Section 19 of these General Conditions, other requirements imposed by this Contract, and any applicable laws, ordinances, codes, Standards, rules, and regulation of the Federal and State to the extent Subcontractors or providers render Services or perform functions that make such provisions applicable to such agreements.

23.32.7 Contractor is responsible for the satisfactory performance hereunder, including, without limitations, with respect to accessibility, warranties, maintenance and support, and oversight of its Subcontractors. Contractor must pass through to State any warranties given by each approved Subcontractor in connection with the obligations of Contractor pursuant to the terms of this Contract for which such Subcontractor has contracted

with Contractor. State will not be bound by any provisions contained in a written agreement with a Subcontractor to which it is not a party.

23.32.8 The substitution of one Subcontractor for another may be made only with prior written approval of State. Any and all substitute Subcontractors provided by Contractor pursuant to the terms of this Contract shall be provided at no additional cost to State beyond the total fixed price indicated in this Contract.

23.32.9 With respect to any Software, Services, Facilities or Equipment acquired by Contractor from a Subcontractor for purposes of this Contract, Contractor must ensure that State is properly licensed for all Software at no additional cost to State (other than as stated in this Contract).

23.32.10 For any Subcontractor, Contractor shall:

23.32.10.1 Be responsible for Subcontractor compliance with the Contract and the subcontract terms and conditions; and

23.32.10.2 Ensure that the Subcontractor follows State's reporting formats and procedures as specified by State.

23.32.10.3 Include in the Subcontractor's subcontract substantially similar terms as are provided in Sections 3.7, 4.5 – 4.9, 8.1, 8.2, 8.4, 9, 12.8, 18, 19, 22, 23.16, and 23.20 of these General Conditions.

23.32.11 Upon expiration or termination of this Contract for any reason, State and/or the State will have the right to enter into direct agreements with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct agreements with State.

23.32.12 Contractor will obtain a written confidentiality agreement from each Subcontractor before that Subcontractor provides Service.

23.32.13 Contractor shall require all Subcontractors, if any, to adhere to the same Standards required of Contractor. Performance of any work by individually directed "contract employees" hired by Contractor shall be considered the sole responsibility of Contractor. Notwithstanding any other term herein, Contractor shall timely exercise its contractual remedies against any non-performing Subcontractor and, when appropriate, substitute another Subcontractor.

23.32.14 Any contracts made by Contractor with a Subcontractor shall include an affirmative statement that the State is an intended third-party beneficiary of the contract, that the Subcontractor has no agreement with the State, and that the State shall be indemnified by Contractor for any claim presented by the Subcontractor.

23.33 Subpoena. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Deliverables or Services provided pursuant to this Contract is served upon Contractor or State, such Party agrees to notify the other

Party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and State further agree to cooperate with the other Party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required, and at the expense of the Party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for State.

23.34 Survival. All Services performed and Deliverables delivered pursuant to the authority of this Contract are subject to all of the terms, conditions, price discounts, and rates set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof.

23.35 UCC Applicability. Except to the extent the Sections of this Contract are clearly inconsistent, this Contract shall be governed by the Uniform Commercial Code as set forth in Chapter 490, HRS. To the extent this Contract entails delivery or performance of services, such services shall be deemed “goods” within the meaning of the Uniform Commercial Code, except when to do so would result in an absurdity. In the event of any clear inconsistency or contradiction between this Contract and the Uniform Commercial Code, the terms and conditions of this Contract shall take precedence and shall prevail unless otherwise provided by law.

23.36 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.

EXHIBIT A.
CHARGES, PAYMENTS, DELIVERABLES AND STANDARDS

1. Charges. Contractor shall charge State the Charges as indicated in Table 10 in section 3.9.1 of the RFP for Deliverables and Services provided by Contractor to the State as required in the Contract.

2. Payment Events and Charges. Contractor shall have the right to issue invoices in the amounts and following the Payment Events as indicated in Table 10 in section 3.9.1 of the RFP as provided in Section 3.6 of this Contract. State shall pay invoices in accordance with Section 3.1 of this Contract. Payments for the applicable deliverables will occur based on the Deliverable Acceptance process outlined in section 3.5.3 of the RFP and will be scheduled as defined in the Project Work Plan & Schedule deliverable. A payment event will include all deliverables eligible for payment based on the Deliverable Acceptance process and Project Schedule.

3. Rates: [NEED FROM THE RESPONSE OR BAFO]

4. Standards.

- a. National Institute of Standards and Technology (NIST) 800 security standards;
- b. The Project Management Institute, specifically the Project Management Book of Knowledge (PMBOK);
- c. Information Technology Infrastructure Library (ITIL);
- d. International Organization for Standardization (ISO) 9000;
- e. National Institute of Standards and Technology (NIST); and
- f. Center for Internet Security (CIS).

EXHIBIT B.
PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES

#	Item	Acceptance Criteria	Liquidated Damages
1	Deliverables	Contractor must meet the due date for Acceptance of each Deliverable, as indicated in the Work Plan. Contractor's Status Reports will provide information on progress toward meeting these Deliverable dates.	State shall assess \$1,000 per day from the Deliverable Acceptance date in the Work Plan until the date each Deliverable receives Acceptance from State.
	Performance Standard	100% of all Deliverables that have received Acceptance and meet their Acceptance Criteria are on Schedule	
	Measurement	Date Deliverable received Acceptance from the State minus Deliverable Acceptance date in the Work Plan or Change Order	
	Reporting Period	Per Deliverable	
	Measurement of Non-Compliance	Per Calendar Day the Deliverable is late	
2	Change Request Management	Contractor shall provide monthly status reports of System Change Requests identifying the status of all outstanding System Change Requests and resulting Change Orders made or agreed upon by State, including those closed since the last report. The Change Request Management status monthly report will include Change Request date, planned completion date, activity priority status, activity status, and actual completion date.	State shall assess \$200 per day for each day an acceptable Change Request Management status monthly report is not timely received by State. For this Performance Standard, "acceptable" means that the Change Request management status monthly reports include the following elements: Change Request date, planned completion date, activity priority status, activity status, and actual completion date.
	Performance Standard	Change Request Management status reports are delivered to the State on a monthly basis 100% of the time.	
	Measurement	Delivered Date is 5 business days from the end of the month	
	Reporting Period	Monthly	
	Measurement of Non-Compliance	Per calendar day the Change Request Management report is late.	

#	Item	Acceptance Criteria	Liquidated Damages
3	Change Request Management	Comprehensive and accurate Change Orders from Contractor to all State Change Requests including proposed solution, cost, and time frames, must be delivered to State within 15 calendar days of receipt of a State Change Request or to a timeframe mutually agreed upon in writing by the Party. Contractor shall promptly notify State of when Contractor has received the Change Request, which shall then commence the 15-calendar day delivery timeframe.	State shall assess \$200 per day for each day an acceptable Change Order is not timely received by State from Contractor. For this Performance Standard, “acceptable” means that the Change Order from Contractor includes Contractor’s proposed solution, associated solution costs, and applicable timeframes to comply with Change Requests made by State.
	Performance Standard	Comprehensive and acceptable Change Orders for all State Change Requests are delivered 100% of the time to the State within 15 calendar days or to a timeframe mutually agreed upon in writing by the Party.	
	Measurement	Calendar days between the delivery date of the comprehensive and acceptable Change Orders and receipt date of State Change Request.	
	Reporting Period	Within 15 calendar days of receipt of State Change Request or to a timeframe mutually agreed upon in writing by the Party.	
	Measurement of Non-Compliance	Per calendar day the Deliverable is late.	
4	System Acceptance	Contractor must receive Acceptance of the System from State following the UAT no later than the Acceptance Date in the Work Plan	State shall assess liquidated damages as noted below for each business day from the Acceptance Date in the Work Plan until the System is Operational following the UAT in accordance with its applicable Specifications and receives Acceptance from State: \$1000 per business day for the first 10 business days \$2000 per business day for the next five business days \$3000 per business day for the next five business days \$4000 per business day for each business day thereafter
	Performance Standard	Acceptance received from the State no later than the Acceptance Date in the Work Plan	
	Measurement	Business days between the date Acceptance is received from the State and the Acceptance Date in the Work Plan.	
	Reporting Period	Actual date the State provides Acceptance for the System	
	Measurement of Non-Compliance	Each business day the System is not Operational by the Acceptance date in the Work Plan will be accumulated.	

#	Item	Acceptance Criteria	Liquidated Damages
5	Turnover Deliverable	Eighteen months prior to the end of the Contract term, Contractor must receive Acceptance for a Turnover Plan covering the possible turnover of System and operation activities to either the State or a successor contractor. The Turnover Plan must be a comprehensive Deliverable detailing the proposed schedule, activities, and resource requirements associated with the turnover tasks	State shall assess \$1,000 per day that from the Turnover Plan does not receive Acceptance 18 months prior to the end of the Contract term until the date the Turnover Plan receives Acceptance from State
	Performance Standard	State approves a comprehensive Turnover Plan received eighteen months prior to the end of the Contract term	
	Measurement	Each calendar day between the Turnover Plan Acceptance date from the state and the end of the Contract term, minus eighteen months	
	Reporting Period	Submission of a Turnover Plan for the State's Acceptance	
	Measurement of Non-Compliance	Turnover Plan does not receive Acceptance from the State eighteen months prior to the end of the Contract term	
6	Transition of CCWIS M&O	Activities are completed in accordance with established and accepted M&O Transition Plan	State shall assess liquidated damages as noted below for each business day from the Acceptance Date in the Work Plan until the CCWIS M&O Services are Operational and receive Acceptance from State: \$1000 per business day for the first 10 business days \$2000 per business day for the next five business days \$3000 per business day for the next five business days \$4000 per business day for each business day thereafter
	Performance Standard	All Activities are completed and receive Acceptance by the dates on the Transition Plan	
	Measurement	Business days between the State Acceptance date and the completed Transition Checklist Acceptance dates in the Transition Plan	
	Reporting Period	Per Deliverable	
	Measurement of Non-Compliance	Per business day the Deliverable is late	

#	Item	Acceptance Criteria	Liquidated Damages
7	Acceptance Tests, Warranty Services and Maintenance Services	State will determine the severity level assigned to a Deficiency. Severity Level 1 – Critical or Emergency - A Deficiency that causes: (a) a complete failure or unavailability of the System, in whole or in part; (b) failure or unavailability of the System, in whole or in part, in one or more State remote locations; or (c) loss of multiple System Functions. ☐ Performance Standard for responding to inquiry is 30 minutes. ☐ Performance Standard for reporting recommended resolution and estimated fix date/time for all System components is 2 clock hours. ☐ Performance Standard for correction of Deficiency is 16 clock hours.	State shall assess the liquidated damages as specified below for failure to meet each Severity Level 1 Performance Standard time. \$1000/24 hour period 0 to 72 hours beyond Performance Standard \$2000/24 hour period 73 to 168 hours beyond Performance Standard \$3000/24 hour period 169 to 336 hours beyond Performance Standard \$4000/24 hour period > 336 hours beyond Performance Standard
		Severity Level 2 - Major, no Workaround –A Deficiency for which there is no Workaround acceptable to State and which causes (a) repeated, consistent failure of Functions, (b) a Deficiency which affects more than one User or (b) loss or corruption of Data. ☐ Performance Standard for responding to inquiry is 30 minutes. ☐ Performance Standard for reporting recommended resolution and estimated fix date/time for all System components is 2 clock hours. ☐ Performance Standard for correction of Deficiency is 24 clock hours.	State shall assess the liquidated damages as specified below for failure to meet each Severity Level 2 Performance Standard time. \$ 800/24 hour period 0 to 72 hours beyond Performance Standard \$1600/24 hour period 73 to 168 hours beyond Performance Standard \$2400/24 hour period 169 to 336 hours beyond Performance Standard \$3200/24 hour period > 336 hours beyond Performance Standard
		Severity Level 3 - Minor A Deficiency that has an existing Workaround acceptable to State, a Deficiency that impacts a Function, or a Level 2 Deficiency that affects only one User ☐ Performance Standard for responding to problem call is 60 minutes. ☐ Performance Standard for reporting recommended resolution and estimated fix date/time for all System components is next business day. ☐ Performance Standard for correction of Deficiency is 3 business days	State shall assess the liquidated damages as specified below for failure to meet each Severity Level 3 Performance Standard time. State shall assess the liquidated damages as specified below for failure to meet each Severity Level 3 Performance Standard time. \$ 300/business day 0 to 3 business days beyond Performance Standard \$ 600/business day 4 business days to 7 business days beyond Performance Standard \$ 900/business day 8 business days to 14 business days beyond Performance Standard \$1200/business day > 14 business days beyond Performance Standard

#	Item	Acceptance Criteria	Liquidated Damages								
		Severity Level 4 - Non-Essential - A Deficiency that doesn’t impact Functions or that is a cosmetic or other Deficiency that does not qualify as any other Deficiency. ☐ Performance Standard for responding to Deficiency call is 48 clock hours. ☐ Performance Standard for reporting recommended resolution and estimated fix date/time for all System components is 5 business days. ☐ Performance Standard for correction of Deficiency shall be to include the correction within the next Version Release or as otherwise agreed to by the State	State shall assess the liquidated damages as specified below for failure to meet each Severity Level 4 Performance Standard time. <table><tr><td>\$ 100/24 hour period</td><td>3 business days beyond Performance Standard</td></tr><tr><td>\$ 125/24 hour period</td><td>4 business days to 7 business days beyond Performance Standard</td></tr><tr><td>\$ 150/24 hour period</td><td>8 business days to 14 business days beyond Performance Standard</td></tr><tr><td>\$ 200/24 hour period</td><td>> 14 business days beyond Performance Standard</td></tr></table>	\$ 100/24 hour period	3 business days beyond Performance Standard	\$ 125/24 hour period	4 business days to 7 business days beyond Performance Standard	\$ 150/24 hour period	8 business days to 14 business days beyond Performance Standard	\$ 200/24 hour period	> 14 business days beyond Performance Standard
\$ 100/24 hour period	3 business days beyond Performance Standard										
\$ 125/24 hour period	4 business days to 7 business days beyond Performance Standard										
\$ 150/24 hour period	8 business days to 14 business days beyond Performance Standard										
\$ 200/24 hour period	> 14 business days beyond Performance Standard										
	Performance Standard	Appropriate actions taken to correct Deficiency within the timeframe required based on severity.									
	Measurement	Measurement/information obtained from ServiceNow and/or other applicable customer support desk system. Accountable time starts from acknowledged date/time on ServiceNow and/or other applicable customer support desk system.									
	Reporting Period	Monthly									
	Measurement of Non-Compliance	Severity Level 1 and Severity Level 2, hours are greater than the Performance Standard for responses, reports or corrections. Severity Level 3 and 4, Calendar days are greater than the Performance Standard for responses, reports, or corrections.									
8	Security Management Notice and Mitigation	Contractor shall notify the State Project Manager within one hour following the identification of any potential or actual major or minor incident, including any breach, any attack, or the introduction of any disabling device, related to the System. Contractor shall take corrective action to mitigate the potential or actual major or minor security incident within two hours following the identification of each potential or actual Security Incident. All potential or actual Security Incidents identification times shall be documented within the Security Report. Contractor shall provide Equipment, Facilities, Services or Software metrics to support the potential or actual Security Incidents identification time. Contractor shall also report the notification time of notifying the State Project Manager.	Liquidated damages for non-compliance with the notification to the State Project Manager Performance Standard shall be assessed at \$5,000 per Security Incident per Day. Liquidated damages for non-compliance with the corrective action mitigation of the potential or actual Security Incident Performance Standard shall be assessed at \$5,000 per Security Incident per Day.								

#	Item	Acceptance Criteria	Liquidated Damages
		Within the Security Report, Contractor shall document the correct action taken to mitigate the potential or actual Security Incidents. Contractor shall also provide Equipment or Software metrics to support the potential or actual Security Incidents correct action mitigation. Once an event has been confirmed to have an impact on security, the event is classified as a Security Incident	
	Performance Standard	Notification to the State Project Manager within one clock hour and corrective action taken to mitigate the potential or actual major or minor security incident within two clock hours following the identification of each potential or actual incident	
	Measurement	Notification – Actual Security Incident identification time from the Security Report minus the notification time to the State Project Manager Corrective Action – Actual corrective action mitigation time from the Security Report minus the identification of each potential or actual Security Incident	
	Reporting Period	Per Incident	
	Measurement of Non-Compliance	Notification not reported to State Project Manager within one clock hour or corrective action not taken to mitigate threat within two clock hours.	
9	Security Management Report	Contractor shall provide a written report and assessment within 12 clock hours following the identification of the minor security incident regarding all actions taken concerning each identified minor security incident, including any breach, any attack, or the introduction of any disabling device, the current status, and any potential impact(s) to the State Project Manager of the security incident. Contractor shall provide a high level and summary analysis in two hours and a written report and assessment within eight hours following the identification of the major security incident regarding all actions taken concerning each identified major security incident, including any breach, any attack, or the introduction of any disabling device, the current status, and any potential impact(s) to the State Project Manager of the security incident.	For each and every occasion that the Contractor fails to meet the Security Management Report Performance Standard, as determined by the State Project Manager, Contractor shall be assessed Liquidated Damages of \$500 for each clock hour and each fraction of a clock hour that this report and assessment is late.

#	Item	Acceptance Criteria	Liquidated Damages
		Contractor shall provide a written report and assessment regarding all actions taken concerning each identified security incident, including any breach, any attack, or the introduction of any disabling device, the current status, and any potential impact(s) to the State Project Manager of the security incident. Each security incident shall be categorized according to criticality as either minor or major. ☐ For a minor security incident, which causes limited loss of Confidential Information, integrity, protection, and/or availability of the System to organizational operations, organizational assets, or individuals, this report and assessment shall be provided within 12 hours following the identification of the minor security incident. ☐ For a major security incident, which causes serious or catastrophic loss of Confidential Information, integrity, protection, and/or availability of the Systems to organizational operations, organizational assets, or individuals, this report and assessment shall be provided within eight hours following the identification of the major security incident. The State Project Manager, in his sole discretion, may require Contractor to update this report and assessment on an hourly or daily basis depending on criticality, status, and possible impact to State.	
	Performance Standard	Minor security incident – assessment and report provided to the State Project Manager within twelve clock hours following the identification of the minor security incident. Major security incident – assessment and report provided to the State Project Manager within eight clock hours following the identification of the minor security incident.	
	Measurement	Each clock hour between the date and time the Project Manager received report of the minor or major incident and the date and time of the minor or major incident discovery.	
	Reporting Period	Each occurrence	
	Measurement of Non-Compliance	Report of incident more than twelve clock hours for minor incident and eight clock hours for major incident.	

#	Item	Acceptance Criteria	Liquidated Damages
10	System Availability	The System, in whole and in part, including but not limited to Hosting Services, must have Operational for State in accordance with Specifications 99.99% of the time 24 hours/day, seven days per week, except for planned maintenance	State shall assess liquidated damages as specified below, per hour for each hour, or portion thereof, if the System fails to meet these Availability Performance Standards. \$1,000/hour 0 to 24 hours beyond the Performance Standard \$2,000/hour 24 to 48 hours beyond the Performance Standard \$3,000/hour > 48 hours beyond the Performance Standard
	Performance Standard	The System is Operational for the state 99.99% of the time, 24 hours per day, seven days per week, except for planned maintenance	
	Measurement	(Number of minutes of Availability during the reporting period) divided by (total planned Availability during the reporting period)	
	Reporting Period	Monthly	
	Measurement of Non-Compliance	Number of minutes of unplanned outage during the reporting period	
11	System Performance – Response Times	Contractor must meet the following response time Performance Standards for the System during Acceptance Tests and after the System, in whole or in part, is in Production: Record Inquiry Search Response Time: The time elapsed from receipt of the transaction by the System until the System completes delivery of the transaction to the User must not exceed 0.5 second for any inquiry by State staff. Record Create, Update, Delete Response Time: The elapsed time from receipt of the transaction by the System until the System completes delivery of the transaction to the User must not exceed 1.5 seconds for any create, update, or delete transactions	State shall assess liquidated damages, as specified below, for the percentage within a month where response times fall below the applicable Performance Standard. \$ 0/month 95% - 100% \$10,000/month 90% - 94.9% \$20,000/month 85% - 89.9% \$25,000/month Less than 85%
	Performance Standard	Response times for Record Inquiry, Search is less than 0.5 seconds. Response times for Record Create, Updated, Delete is less than 1.5 seconds	
	Measurement	(Total number of inquiries greater than 0.5 seconds) divided by (total number of inquiry requests) (Total number of create, Update, Delete requests greater than 1.5 seconds) divided by (total number of create, updated, Delete requests)	

#	Item	Acceptance Criteria	Liquidated Damages
	Reporting Period	Monthly	
	Measurement of Non-Compliance	Response times greater than 0.5 seconds for Record Inquiry, Search. Response times are greater than 1.5 seconds for Record Create, Update, Delete.	
12	Satisfaction for DD&I	DHS will use the System Usability Scale (SUS) questionnaire to conduct User Satisfaction Surveys. Surveys of the CCWIS system will be conducted between 30 and 45 calendar days after Production Acceptance, and again between 120 and 135 days after Production Acceptance.	The State shall assess liquidated damages of \$10,000 per month for the Contractor's failure to meet Satisfaction Performance. Until documented corrective actions, pre-approved by the State, are taken and a follow-up survey is conducted to confirm that the system meets Satisfaction Performance Standard.
	Performance Standard	User Satisfaction Survey score is 70% or higher after the second User Satisfaction Survey is completed.	
	Measurement	Scoring methodology described in "SUS – A quick and dirty usability scale" by John Brooks, available in the Procurement Library.	
	Reporting Period	Monthly	
	Measurement of Non-Compliance	User Satisfaction Survey score is below 70%.	
13	Satisfaction for M&O	DHS will use the System Usability Scale (SUS) questionnaire to conduct User Satisfaction Surveys. Annual surveys of the CCWIS system will be conducted in M&O Phase.	The State shall assess liquidated damages of \$10,000 per month for the Contractor's failure to meet Satisfaction Performance. Until documented corrective actions, pre-approved by the State, are taken and a follow-up survey is conducted to confirm that the system meets Satisfaction Performance Standard.
	Performance Standard	User Satisfaction Survey score is 70% or higher.	
	Measurement	Scoring methodology described in "SUS – A quick and dirty usability scale" by John Brooks, available in the Procurement Library.	
	Reporting Period	Annually	
	Measurement of Non-Compliance	User Satisfaction Survey score is below 70%.	

#	Item	Acceptance Criteria	Liquidated Damages
14	Compliance with Other Contract Provisions	The RFP includes Performance Standards which are not listed in the table in Exhibit B. State shall have the right to notify Contractor of its failures to meet these additional Performance Standards, request a Corrective Action Plan, designate a date by which Contractor must provide a Corrective Action Plan and designate a period of time in which the Contractor must remedy the failure to meet the Performance Standard. Contractor shall provide a Corrective Action Plan within the time period designated by State, fulfill the obligations regarding Corrective Action Plans in the Contract, and remedy the failure within the time period designated by State	If the Performance Standard failure is not corrected by Contractor within the due date required by State, State shall assess liquidated damages of \$1000 per Day after the due date until the failure is corrected in State's judgment
	Performance Standard	State satisfied with the Contractor's Performance Standards corrections.	
	Measurement	Performance Standards corrected within the State's required due date.	
	Reporting Period	Report completion of remediation for State's approval.	
	Measurement of Non-Compliance	Performance Standard not corrected within the time period designated by the State.	
15	Final System Acceptance	Contractor must receive Final System Acceptance from State following successful completion of Implementation and Deployment throughout the State in accordance with its applicable Specifications no later than the Final System Acceptance Date in the Work Plan	State shall assess liquidated damages as noted below for each business day from the Final System Acceptance Date in the Work Plan until successful completion of Implementation and Deployment throughout the State in accordance with its applicable Specifications and receives Final System Acceptance from State: \$1000 per business day for the first 10 business days \$2000 per business day for the next five business days \$3000 per business day for the next five business days \$4000 per business day for each business day thereafter
	Performance Standard	Acceptance received from the State no later than the Acceptance Date in the Work Plan	
	Measurement	Business days between the date Acceptance is received from the State and the Acceptance Date in the Work Plan.	
	Reporting Period	Actual date the State provides Acceptance for the System	
	Measurement of Non-	Each business day the System is not Operational by the Acceptance date in the Work Plan will be accumulated.	

#	Item	Acceptance Criteria	Liquidated Damages
	Compliance		

EXHIBIT C. GUARANTY

In consideration of the execution by the State of Hawaii ("State") of the Contract dated *[Month Day]*, 202_ (the "Contract") with _____, Inc. ("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 their 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:

EXHIBIT D. LETTER OF CREDIT

LETTER OF CREDIT

Bank _____
_____, 2023

Irrevocable Letter of Credit

Number: _____

Amount: US \$1,000,000

To whom it may concern:

At the request and for the account of the State of Hawaii Department of Human Services (DHS), 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 \$1,000,000 (One Million United States Dollars), inclusive of any banking charges effective as of today's date and expiring at the end of one year following Final System Acceptance.

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

A Certificate signed by the Director of the State of Hawaii Department of Human Services to the effect that the amount drawn represents funds due and payable to you because of the following reason:

Nonperformance of the Contractor (_____) pursuant to contract # _____ dated as of _____, 2023 for designing, developing, implementing, operating and maintaining the new DHS CCWIS.

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 (1993 Revision) International Chamber of Commerce Publication Number 500, as modified from time to time.

Yours faithfully,

For and on behalf of

Bank _____

By: _____

Title: _____

