



RELEASE DATE: November 16, 2020

**The State of Hawaii
DEPARTMENT OF ACCOUNTING AND GENERAL
SERVICES, OFFICE OF ENTERPRISE TECHNOLOGY
SERVICES**

**Request for Proposals
Solicitation #RFP-ERP-2020**

AN ENTERPRISE FINANCIAL SOLUTION

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

February 9, 2021

(or such later date as may be established by the State of Hawaii by an Addendum to this RFP)
BY SUBMISSION TO THE STATE OF HAWAII EPROCUREMENT SYSTEM (HIEPRO)

**DIRECT ALL QUESTIONS REGARDING THIS REQUEST FOR PROPOSALS (RFP) THROUGH
HIEPRO. FOR QUESTIONS OR ISSUES RELATING TO THE ACCESSIBILITY OF THIS RFP
(INCLUDING THE ATTACHMENTS AND EXHIBITS AND ANY OTHER DOCUMENT RELATED
TO THIS RFP) AND REQUESTS FOR ACCOMMODATIONS FOR PERSONS WITH DISABILITIES
IN CONNECTION WITH THIS RFP, CONTACT:**

TODD OMURA, TELEPHONE
(808) 586-1824 OR EMAIL ADDRESS todd.t.omura@hawaii.gov



Douglas Murdock (Nov 12, 2020 11:40 HST)
Douglas G. Murdock
Chief Information Officer /
Procurement Officer

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RFP Administrative Information

RFP Title:	An Enterprise Financial Solution
RFP Project Description: (See Section 1.1 Purpose)	The State of Hawaii is seeking Contractor(s) to provide a solution that will unify and modernize certain State IT systems and processes and State business processes.
RFP Point of Contact: (See Section 1.6 State Contract Administrator)	Contract Administrator – Todd Omura Agency Name – Office of Enterprise Technology Services Agency Address – 1151 Punchbowl Street, Room B10 Honolulu, HI 96813 Email – todd.t.omura@hawaii.gov Phone – (808) 586-1824
Deadline to submit signed Non-Disclosure Agreement (NDA) for access to Offeror’s Library:	November 30, 2020; 4:00 P.M. Hawaii Standard Time (HST) via email to todd.t.omura@hawaii.gov.
Pre-Proposal Conference: Pre-Proposal Conference Location: (See Section 2.4 Pre-Proposal Conference)	December 15, 2020; 12:00 P.M. (Noon) Hawaii Standard Time (HST) Pre-Proposal conference will be conducted virtually via the Microsoft Teams application
Deadline for Submission of Written Questions: (See Sections 1.3 Schedule and Significant Dates and 2.6 Electronic Submission of Questions)	December 29, 2020; 4:00 P.M. Hawaii Standard Time (HST) via HIEPRO.
State’s Response to Written Questions: (See Sections 1.3 Schedule and Significant Dates and 2.6 Electronic Submission of Questions)	January 12, 2021. All answers will be posted to HIEPRO.
Deadline for Submission of Letter of Intent to Submit Proposal: (See Section 1.3 Schedule and Significant Dates)	January 26, 2021; 4:00 P.M. Hawaii Standard Time (HST) via email to todd.t.omura@hawaii.gov.
Submit Proposals electronically via Hawaii Electronic Procurement System (HIEPRO): (See Section 2.2 Electronic Procurement)	Electronic Submission via hiepro.ehawaii.gov. File size limit = 100MB. Submit multiple files, if desired.
Deadline for Submission of Proposals: (See Section 1.3 Schedule and Significant Dates)	February 9, 2021 4:00 P.M. Hawaii Standard Time (HST) via HIEPRO
Initial Term of Contract and Extensions: (See Section 1.5 Period of Performance)	Initial period of three (3) years. Upon mutual agreement, the contract may be extended or amended for up to two (2) one (1) year extensions.
NOTE: THERE IS NO FEE TO REGISTER IN HIEPRO OR TO SUBMIT AN OFFER. THE AWARDED CONTRACTOR SHALL BE SUBJECT TO A ONE-TIME HIEPRO FEE OF .75% OF THE AWARD AMOUNT OR \$5,000.00, WHICHEVER IS LESS, PAYABLE TO HAWAII INFORMATION CONSORTIUM, LLC (HIC).	

REQUEST FOR PROPOSALS An Enterprise Financial Solution

RFP Document for Solicitation # RFP-ERP-2020

Section 1: General Information

1.1 Purpose

The purpose of this RFP is to allow the Department of Accounting and General Services, Office of Enterprise Technology Services (the State) to identify and engage an Enterprise Financial System (EFS) Contractor to provide a solution that will unify and modernize certain State IT systems and processes and State business processes.

The State is requesting Proposals for an EFS that meets the State's business goals and all requirements of this RFP, which includes all exhibits and appendices attached to this RFP document.

1.1.1 State Business Goals

- 1.1.1.1** Functionality in the EFS that delivers the greatest business benefit to the State.
- 1.1.1.2** Improved financial processes, timeliness, consistency, and accuracy of financial transactions and reporting. Reduction in dependency on paper.
- 1.1.1.3** Minimal risk to the State and maximum business benefit to the State.
- 1.1.1.4** Improved transparency in government accounting.
- 1.1.1.5** Enables consistent adoption and application of policies and procedures across State departments.
- 1.1.1.6** Increased efficiency to improve State services to its employees and for the citizens, residents, and businesses in the State.
- 1.1.1.7** An EFS that reduces disruption to State employees and State business processes, and impact to the State by minimizing complexity in implementation, operation, and support.

1.1.1.8 Training of State staff to configure and operate the EFS with minimal support from consultants and provides for ongoing training and knowledge transfer regarding operating the system.

1.2 Background

1.2.1 Existing State IT Structure

1.2.1.1 The responsibility for several core administrative functions such as financial management, acquisition management, human resource management, payroll, and budget management is distributed between each State department and central departments such as the Department of Accounting and General Services , Budget and Finance, and the Department of Human Resources Development. The State of Hawaii Government is organized according to jurisdictions which represent separate branches of government, and departments and agencies as follows:

Jurisdiction	Comprised Of
Legislative Branch	The Senate ("Senate") The House of Representatives ("House") The Legislative Reference Bureau ("LRB") The Office of the Auditor ("Auditor") The Ethics Commission ("Ethics") The Office of the Ombudsman ("Ombudsman")
Judicial Branch ("JUD")	--
Executive Branch	Department of Accounting and General Services ("DAGS") Department of Agriculture ("DOA") Department of the Attorney General ("ATG") Department of Budget and Finance ("B&F") Department of Business, Economic Development, and Tourism ("DBEDT") Department of Commerce and Consumer Affairs ("DCCA") Department of Defense ("DOD") Department of Education ("DOE") The Office of the Governor ("GOV") Hawaii Health Systems Corporation ("HHSC") Department of Hawaiian Home Lands ("DHHL") Department of Health ("DOH") Department of Human Resources Development ("DHRD") Department of Human Services ("DHS") Department of Labor and Industrial Relations ("DLIR") Department of Land and Natural Resources ("DLNR") The Office of the Lt. Governor ("LTGOV") Hawaii State Public Libraries ("HSPL")

	Department of Public Safety (“PSD”) Department of Taxation (“DOTAX”) Department of Transportation (“DOT”) <ul style="list-style-type: none"> - Administrative Division (“DOT-Admin”) - Airports Division (“DOT-AIR”) - Harbors Division (“DOT-HAR”) - Highways Division (“DOT-HWY”) University of Hawaii (“UH”)
Office of Hawaiian Affairs (“OHA”)	--

1.2.1.2 Inside the State Treasury are various departments of the executive branch, and segments of the Judicial and Legislative Branches. Certain State entities outside of the State Treasury have limited authority to self-manage using independent systems and bank accounts. Outside of the State Treasury are the Employee Retirement System which is managed by B&F, OHA, and UH. In 2020, the DOE and DOT-HWY are expected to implement their own financial systems. Several other departments transfer financial data into and out of the State’s legacy financial system. See Appendix H, Interfaces.

1.2.1.3 There are several key systems that support administrative functions across the State and are operated by the central departments, and an EFS may replace or integrate into all of these. These are as follows:

System	Central Department(s)	Purpose
Hawaii Information Portal (HIP), also known as the Human Resource Management System (HRMS)	DAGS/DHRD	Human Resources, Payroll, Employee Time and Attendance
Financial Accounting Management and Information System (FAMIS)	DAGS	General Ledger, Accounts Payable
FAMIS Datamart	DAGS	Data Warehouse for FAMIS and HIP
Fixed Asset Inventory System (FAIS)	DAGS	Fixed asset management
eProcurement	DAGS	Procurement life cycle
eBuddi	B&F	Appropriations and operating budget preparation
eCIP	B&F	Capital improvement project

		budget management
eAnalytical	B&F	Performance measures on budget
eVariance	B&F	Budget variance reporting system (does not handle budget-to-actuals)
eRevenue	B&F	Quarterly revenue/receipts collected
Federal Award Management System (FAMS)	B&F	Manages federal contract and grant data
eTitles	B&F	Set program structure (IDs, etc.) and for budget
eXwalk	B&F	Set up of appropriation account numbers from budget

1.2.1.4 In 2015, the State commissioned a third-party study to recommend a Uniform Chart of Accounts and the State desires an implementation of the third-party's recommendation in its EFS. A copy of the study and its recommendations are available in the Offeror's Library. See Exhibit 2 for instructions on accessing the Offeror's Library.

1.2.1.5 The State is seeking an EFS for the following functional areas, to be rolled out in phases, as well as a robust Data Warehouse for reporting:

- a) General Ledger
- b) Encumbrances
- c) Accounts Payable
- d) Accounts Receivable
- e) Cash Management
- f) Purchasing
- g) Data Warehouse
- h) Projects
- i) Appropriations
- j) Budget
- k) Travel
- l) eProcurement
- m) Grant Management
- n) Investments
- o) Bonds
- p) Asset Inventory

1.2.1.6 According to a recent survey of users, current State systems and business processes present numerous challenges that may be solved with an EFS:

Survey Feedback on Systems

FAMIS	<p>FAMIS is difficult to use for reporting purposes and harder to navigate. Input screens are hard to fill out and use; error messages are difficult to decipher; users are logged off after 10-15 minutes of no action.</p> <p>Cannot get current and historical information together.</p> <p>Cumbersome to use for input and reviewing data. It also accepts erroneous data input and does not detect until upload for reporting back the next day.</p> <p>Problems with extraction of payroll data from FAMIS. Often posting is delayed a number of days after payroll is run.</p> <p>FAMIS has very limited fields (or characters) to input important data/information. Vendor look up portion can't be edited once printed. Whenever there is an error in vendor's name, transaction needs to be deleted and have to create another one. There should be a way to correct entry once posted besides doing JV or AJE to correct entries. When making payments, when you input the vendor number, the vendor name should automatically appear on the 2nd line (vendor name entered) to avoid error. We need access to some of the department file inquiry screens (function 70, 71, 72, 74). We were told we can't have this since it wasn't set up in the beginning. We need access to real-time data is needed. Password requirement is too long. We can only get report by fiscal year. It would be better if can get report for a specified period (i.e. 07/01/20 - 09/30/20).</p> <p>Sometimes it takes too long to make corrections. Have to go through several screens to get to the one needed. This makes it a little confusing at times. Beginning of each fiscal year, payment invoices can't be processed until DAGS creates the new appropriation accounts. The amount of time for DAGS to create those new accounts may take up to 3 weeks. Some of the appropriation accounts require roll over of the allotment balances from prior fiscal year, before payments can be processed, again takes up more time.</p> <p>FAMIS does not have common standard reports so we need to rely on other systems to come up with reports to help management such as monthly income and expense statements, GL, etc. Also, since FAMIS closes a month following, the data is old; need more timely reports.</p> <p>There should be a way to query the system to respond to questions (i.e. management, legislature, public, etc.) Currently, you need to have your own system or figure out a way to get the information to respond timely.</p> <p>Difficult to work with since some entries are one-sided entries.</p> <p>The FAMIS System is a very old system, still using the MS DOS screen I believe (the black, dot matrix screen). The system does not allow us to keep track of the status of the summary warrant vouchers that we submit. The voucher goes to different branches of the DAGS-Accounting Division, and we just wait until the check cuts or when DAGS calls us for any error to correct. It gets submitted first to DAGS-Pre-Audit, then it goes to DAGS Accounting (UARB), then DAGS Data Entry, then back to DAGS Pre-Audit for check distribution. It would be good if the system has a tracking feature so we at the departmental level are informed. Also, the hard copy of error reports are being forwarded to our office via DAGS messenger, it would be better if error reports are transmitted electronically so that we can go online and correct our voucher right way. The FAMIS System does not have any "download" feature. It is not user-friendly too. The data is not easy to understand because it is in the MS DOS mode.</p> <p>It would be helpful if FAMIS generated 1099s for departments.</p>
eVariance	Need to provide access to sections to update data for their programs.

	<p>Requires a cumbersome hand transfer of data collected from a variety of databases, spreadsheets and transcription from program level reports. Description of the program structure should be added on the variance report, hard to tell from the number only.</p> <p>Not fully automated and requires off-line analysis.</p> <p>Unable to change measures</p>
eRevenue	<p>Need automated way for users to have access to their accounts and updates online. Actual revenues must be entered manually and requires users to enter name and phone number for every entry.</p> <p>Wish I could scroll through rather than constantly returning to home screen.</p> <p>Data entry that should be provided through electronic data transfer. The update should be on the total revenue category (e.g. total rents, fees, etc.) not by source code. The increase/decrease in projections can be explained on the Explanation Section.</p> <p>The interface is pretty dated, sorting through the records can be confusing because you just see the program ID, sequencing, source code, and the description of the record. It's a time-consuming process when we have to sift through the records to make sure the information on there is correct.</p> <p>Difficult to predict awards four to five years out so estimates are very inflated based on awards applied for versus what is received. Then trying to correct the estimate based on what is awarded needs justification because the variance is large.</p>
eCIP	<p>Not able to go back to a page, you must go to the beginning and start over.</p>
FAMS	<p>Cumbersome to roll over accounts to new FYs. If the updates on FAMS are reflected on Datamart appropriation account, it will be very helpful.</p> <p>Only allows for 3 years when the federal awards are five, then needing to resubmit. Not sure if this is an issue with FAMS or policy.</p> <p>Need the following:</p> <p>Ability to have FAMS be linked to Form E-1 and E-2 so that you don't need to have 2 screens open in order to fill in the E-1 and E-2 information. The redundant information should be automatically filled in.</p> <p>Ability to have the Federal grant database linked to FAMS so all the grant information can be accessed at one time.</p> <p>Ability to have the Federal grant database linked to FAMS so all the grant information can be accessed at one time.</p>
eBuddi	<p>Requires manual data entry of what is in HRMS; Requires manual entry of budget information that is contained on budget documents.</p> <p>Temp and Perm positions need be listed on BJ summaries.</p> <p>Data entry that should be provided through electronic data transfer. HRMS Database and the BJ Table interface so that information can be updated automatically and be more up to date with the incumbent's pay and title. This helps with budgeting and having enough funds.</p> <p>BJ details list and update on Current Expenses should be by main classification of object codes (e.g. 3200, 7100, etc.).</p> <p>Not able to process discrepancy field to view while working within ebuddi. Must leave the system and print a written report to see any discrepancy then return. This causes a large delay. In addition, must be able to input negative numbers into the system to correct for errors in Legislative bill.</p>

	<p>All of the budget systems are pretty outdated but eBuddi gives the most grief. Having to go to a different screen to update each line item in the budget and then download a pdf report to check if totals are correct is very time consuming. Would also be nice if eBuddi was somehow tied to FAMIS so the previous years' actual expenditures do not need to be entered manually.</p>
eAnalytical	<p>Need to provide access to sections to update data for their programs. The system should have the program structure in word document. Currently, we have to ask B&F to provide in word docs for updates.</p> <p>Should have a different system for federal grants.</p>
FAMIS Datamart	<p>Requires a good understanding of the data set (accounting and budget) and extract accordingly. Totals on different pages do not match; delay in qtr. end closing; Payroll reconciliation lags.</p> <p>Would like historical data along with current data. DATAMART is the best source of information, however, access to additional queries with additional chart fields, especially for payroll expenses and periods. There are times Account Summary and YTD Quarterly Information balances don't match, especially for federal fund accounts (although it says Datamart is in balance). Payroll data in Datamart does not match payroll data in HIP. Information in HIP not linked to Datamart - would have been easier to download reports. Datamart and FAMIS info are not the same due to late posting in Datamart. When building reports with multiple funds, manually selecting by clicking the box is cumbersome and error prone. We should be able to enter/input the appropriation accounts as opposed to manually selecting them from the dropdown list (scrolling down through all the accounts). Why are there more than one version of FAMIS PDR Reports. Reports should available in excel format.</p> <p>Datamart lacks the capability to generate common financial reports such as: Trial Balance, Income Statement and many others. State Departments/Agencies must rely on other 3rd party commercial accounting software, then extract data from FAMIS Datamart and upload to 3rd party software, to generate the reports such as these for the annual audit process.</p> <p>Need the following: Ability to query Datamart by project number so you can get all the financial and contract information for a project with multiple appropriation accounts.</p> <p>Ability for Datamart to have an archive feature so you can query contract and project information that have closed.</p> <p>Ability to see PO cancellations instead of having to wait until the end of the following month since FAMIS closes a month later (MBP405).</p> <p>Commonly used accounting reports besides the MBP reports already in Datamart should be included in Datamart.</p> <p>Divisions should be able to run their own reports instead of having to rely on the Department to obtain the reports that pertain to the Division (i.e. MBP412 and MBP 422).</p> <p>Ability to tie in the PCard data to the respective SWW. Alternatively, you should be able to drill in Datamart on the PCard SWW to find the details (vendors, amounts, GL codes). Delays in updating the payroll expenditure information.</p>
FAIS	<p>Recording and reporting are done by excel worksheets which is very labor intensive. Department property managers do not have access to FAIS for data entry and edits. This would reduce error codes. Also, cannot run their own reports.</p>

	<p>Hundreds of forms being submitted quarter after quarter providing entries input by the SPO that cannot be verified until the end of each quarter. It can take up to 3 months before it is known if the entry was posted correctly or posted at all. We had a group of forms that were forgotten by the SPO from when they were working from home. This has turned a 3-month information lag into a six-month information lag. Sites need to have access to view entries as they are posted by the SPO. A once every 3-month report is not acceptable.</p> <p>Adding, removing and editing inventory items - the rules for submitting SPO 017As are so convoluted that it discourages inventory managers from updating their inventory;</p> <p>Slow to update. System can only be updated once per quarter. Inventory reports will almost always be inaccurate.</p> <p>Not interfacing with FAMIS. If FAIS was connected to FAMIS, then additions to inventory could be automatically posted, or at least partially linked so any additions or adjustments to inventory can be monitored.</p> <p>Information on the report is very limited. Unable to record pertinent information due to limited characters in the description or lack of other information we deemed necessary like PO# or FY and quarter the item is being added or modified. This is important because at the beginning of the fiscal year, maintenance control numbers change leaving no identification when the item was first originally added.</p> <p>The maintenance control numbers change every year and it is unclear why. At the beginning of the new fiscal year, new decals cannot be issued until the new maintenance control numbers are set up. Also, changes to data for any single item are only permitted by FAIS once every quarter. For example, the purchase of an item can be input in one quarter, but you can't input a transfer of that item until the next quarter.</p> <p>Item codes need to be updated. 3900 is too broad.</p>
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Survey Feedback on Business Processes

<p>General Ledger</p>	<p>FAMIS does not have detail reports to support the General Ledger. Thus, we have our own system, which makes reconciling time consuming since you need to go to various places to get the information.</p> <p>Difficult to work with since based on Transaction Codes.</p> <p>Whenever there are new external auditors, they ask how to tie in to various accounts. Difficult to show the auditors since for some accounts there are no supporting reports.</p> <p>Once an appropriation has been set up and something has been posted it still shows on our account even though it might belong to another division. This occurs when an account is corrected since it was set up for another division.</p> <p>There should be reports to facilitate items that have been posted to "suspense" accounts so they can be researched and corrected.</p> <p>Difficult to use MPB430 report.</p> <p>There are over 400-plus different transaction codes in FAMIS. To determine which transaction code to use on general ledger can be a challenge.</p>
<p>Encumbrances</p>	<p>Lengthy process.</p> <p>Manual process. Need to automate all forms. Difficult to correct errors. Vendor name and address mismatches in datamart.</p> <p>Better now that contract encumbrances can be submitted esign. However, would be better if submitted on-line with system that would route appropriately for</p>

	<p>approval.</p> <p>There must be an easier way to correct errors when encumbering a PO.</p> <p>Hard to identify on YTD Quarterly Information if payment on Encumbrances are for prior quarter or prior year, especially for federal fund accounts.</p> <p>When you use the FAMIS PO encumbrance, we encounter problems when the value is over a million dollars. We need to manually type that on the PO.</p> <p>Also, when using the FAMIS PO encumbrance, often times if the user makes a mistake the transaction is lost. The user will need to start all over.</p>
<p>Accounts Payable</p>	<p>Electronic signatures should be accepted for invoice payment approvals.</p> <p>System is unable to catch duplicate payments.</p> <p>No ACH payments, need to allow ACH for all forms of payment; takes a while to get checks back to vendors; refund requests require original hardcopy signatures; ability to write off aged petty cash transactions lacking.</p> <p>Not having a standard uniform subsidiary system used by all departments.</p> <p>Interacting with DAGS directly in place of upload and transfer of data into FAMIS.</p> <p>Clear guidance/lists within the system of what backup documents need to be attached to the Summary Warrant Voucher (SWV) would be useful. DAGS Pre Audit routinely reject the SWV and sends it back to the Department when some unclear document requirement is not met.</p> <p>In order to process a payment, data entries are required on multiple screens.</p> <p>Vendor Remittance addresses and registered address at time of payment.</p> <p>User makes corrections in FAMIS. Later DAGS calls and says corrections were not made. SWV submitted to DAGS, but DAGS says batch does not exist. Thus, user needs to re-enter the SWV information again.</p>
<p>Accounts Receivable</p>	<p>Need to automate TDR process.</p> <p>Difficult to get codes to apply credit.</p> <p>FAMIS not able to provide all the different types of revenues which is one of the reasons why we have our own A/R system that is interfaced to FAMIS. Also, there's no A/R reporting such as Aging Reports, generating dunning letters, generating revenue reports, etc. Thus, there is extra work involved since we need to reconcile our internal system to FAMIS.</p>
<p>Cash Management</p>	<p>Cash management is difficult because departmental oversight is lacking.</p> <p>Accounts outside of the state treasury lack detail of accounting data.</p> <p>Currently, there's only a monthly MBP report with all the appropriations; no groupings. It would be nice if the system could be programmed so it would automatically generate a cash report monthly grouped according to each department/division format. The MBP report does not meet our needs so manual excel spreadsheets are used to see the cash according to our preferences.</p> <p>It would be even better if this report could be generated automatically daily. Then we would know exactly where our cash position is instead of waiting about two months (since the month end close occurs about a month after).</p> <p>Whenever new appropriations are created, if the report could automatically be updated for those.</p> <p>There should be a report to show current, month to date, and year to date for the cash collected.</p>

<p>Purchasing</p>	<p>System integration to include purchasing would minimize data errors. Logs and forms are manual. Time consuming to prepare monthly reconciliations. Pre-audit review is subjective and not consistent with AG's office for SPO; need to build in automated rule checks.</p> <p>Procurement is improving, however, would be better if there were some automated actions taken by the system. i.e. interface with HCE and Vendor Price Lists.</p> <p>Need to provide hard stops to buyers. There should be a better way to track/process/search PO's.</p> <p>There should be workflow processes in place to make purchasing streamlined. The process should start with the purchase requisition then flow to the purchase order, so you don't need to manually type the requisition and then type the purchase order.</p>
<p>Projects</p>	<p>No established project development process. Building permits take too long. A month for DAGS and longer for private contractors. Need the following: Ability to create reports showing contract execution dates and amendment execution dates with associated encumbered information.</p> <p>Ability to create own queries using the Contracts Log database.</p> <p>Ability to create excel report of year-to-date expenditures for CIP projects-all funds and all projects (from FAMIS).</p> <p>Ability to create excel report of contracts closed within the past fiscal year.</p>
<p>Appropriations</p>	<p>Manual and labor-intensive process annually and throughout the year. Must prepare manual JVs for sub accounts. Special funds must be appropriated by the legislature for use by the agency. Endless paper documents and copies requiring hand delivery to B&F. Appropriations and Operational Expenditure Plans should be submitted electronically. It will be helpful and will save time if JV to transfer appropriation ceiling from parent account to sub-account and updates FAMS actual federal grant award are linked to appropriations in the Datamart Account summary.</p>
<p>Budget Preparation</p>	<p>Very inefficient use of Excel worksheets. Exhibits and reports are manual. Some of the forms are set right for printing. Operational Expenditure Plans should be submitted electronically. Short turn around of the process to prepare, complete and review the documents/forms for budget requests. Beyond the biennial budget cycle, seems to be not necessary.</p>
<p>Budget-to-Actual</p>	<p>We have no such function, but it's sorely needed! Cumbersome and time consuming using datamart. Not easily available. No accurate real time labor expenditure by project/task. The lack of daily queries reporting balances daily that include budget, encumbrance and expenditures by account.</p>

	<p>Current ebuddi system and FAMIS/Datamart are not really linked. Any tracking currently is manual and time consuming. Close monitoring of the accounts should be applied as other factors are included/considered in the actual amount of the allowed vs authorized.</p> <p>No automated system in place. Currently we have our own report to see Budget vs Actual but a statewide system should be able to do this daily and be able to drill down into the details of the expenses and encumbrances instead of having to use our own system then log onto Datamart to find out the details.</p>
Travel	<p>Too many worksheets -- simplify and consolidate. Travel Approval Forms are difficult to use to be in compliance with HAR and CBA. Everything is manual and labor intensive; per diem calculations are cumbersome. Need to auto calculate and create worksheet B. No follow up on completed travel claims when travel advance issued. Training could be clearer. Obtaining numerous travel quotes cumbersome; need single travel agency to do all state employee official travel. Travel claims involve way too much paper. Claims should be done on On-Line System including all forms with ability for attaching receipts that route through the system for approval and payment. Currently we have our own database to track travel which allows us to easily track the travel request and pull-out reports. A Statewide system should have a way to track from the travel request to the final travel costs and generate reports. (Workflow for the travel to get all the signatures; encumber/de-encumber and record actual costs). As well as check to see if it's within the budget.</p>
Grant Management	<p>Collection of cost match data is not possible, except manually. It needs to be integrated into the financial system. Not having funding available immediately for sub-recipient grants so actual encumbrances and expenditures can be charged to the Grant Account and not a General Fund or Other Fund Account only to be transferred after the fact along with the revenue. Need the ability for the Federal Grant database to be able to track federally funded purchase orders as well as contracts.</p>
Bonds	<p>System is old and we still use spreadsheets. Departments need training on how to read the Form 17 and how to track the expenditure of these funds. All manual at this point. Bonds do not show up in DATAMART/FAMIS.</p>
Asset Inventory	<p>Manual process to break out assets by object codes is labor intensive. Object code and item class do not match; we should just use the object code. Disorganized. Incomplete transfers from other departments. No dedicated person. always constant turnover of responsibility as it is an additional duty. Then trying to conduct physical inventory of the property holder is almost impossible.</p>

1.3 Schedule and Significant Dates

The table below contains the State’s estimate of the schedule and significant dates. All times are Hawaii Standard Time (HST). If a component of this schedule is delayed, the rest of the schedule may be shifted by the same number of days. The State reserves the right to establish new or rescheduled dates as it deems appropriate. Any changes to this table made prior to the Proposal due date shall be made by Addendum via HIEPRO.

Event	Date
Release of the RFP	Monday, November 16, 2020
Deadline to submit signed NDA for access to the Offeror’s Library	Monday, November 30, 2020, 4:00 PM HST
Pre-Proposal Conference	Tuesday, December 15, 2020, Noon HST
Deadline for Submission of Written Questions from Offerors regarding the RFP and regarding the Offeror’s Library	Tuesday, December 29, 2020, 4:00 PM HST
State’s Responses to Written Questions	Tuesday, January 12, 2021
Deadline for Submission of Letter of Intent to Submit Proposals	Tuesday, January 26, 2021, 4:00 PM HST
Deadline for Submission of Proposals	Tuesday, February 9, 2021, 4:00 PM HST
Start of Initial Evaluation of Proposals	Approximately within one week of Deadline for Submission of Offers
Determination of Priority-Listed Offerors (as necessary)	Approximately within one week of Start of Initial Evaluation of Offers
Discussions with Priority-Listed Offerors (as necessary)	Approximately one month of Determination of Priority-Listed Offerors
Deadline for BAFO Submission (if required)	Approximately within two weeks of Discussions with Priority-Listed Offerors
Notice of Award	Approximately within two weeks of Deadline for BAFO Submission
Contract Executed	To be determined
Notice to Proceed	To be determined

1.4 Contract Type

The contract type shall be Firm Fixed-Price.

1.5 Period of Performance

The initial term of the Contract between the State and the Contractor shall be for three (3) years. The Contractor shall complete the EFS System and fulfill the EFS Services

within the 3-year term of the Contract. For compliance and reporting purposes, deployment of core functionality must take place on July 1, 2022 to align with the State's fiscal year calendar (i.e., FY23). [See Appendix A-1: Core Phase Requirements.] Deployment of expanded features is envisioned to be deployed on July 1, 2023 (i.e., FY24). [See Appendix A-2: Expansion Phase Requirements.] Deployment of optional features, if elected by the State, may be deployed on January 1, 2024. [See Appendix B: Optional Phase Requirements.]

If in the State's determination, a period of more than three (3) years is required to complete all deliverables, the Contract shall be extended for the period of time determined by the State that would be needed, based on the same terms and conditions, except to the extent that the State desires to change or add terms or conditions, and upon mutual agreement in writing between the State and the Contractor. The Contractor shall execute any other document required by law or reasonably requested by the State. The extension of the term of the Contract is subject to the availability of State funding, unless it is for time only.

The State will permit the extension of the Contract for a maximum of two (2) one-year terms. The Contract shall not exceed a total term of five (5) years.

1.6 Point of Contact

The Office of Enterprise Technology Services is the issuing office for this document and all subsequent Addenda relating to it. The reference number for the transaction is Solicitation # RFP-ERP-2020. This number must be referred to on all Proposals, correspondence, and documentation relating to the RFP. The State may designate one or more members of ETS as a successor or successors to the individual designated as the Contract Administrator in this section.

The Contract Administrator identified below is the single point of contact (State POC) for this procurement process:

Todd Omura
IT Governance Officer
State of Hawaii Office of Enterprise Technology Services (ETS)
1151 Punchbowl Street, Room B10, Honolulu, HI 96813
todd.t.omura@hawaii.gov
Phone: (808) 586-0781

Offerors and interested persons shall submit all questions concerning the procurement process, technical requirements of this RFP, contractual requirements, changes, clarifications, and protests, the award process, and any other questions that may arise related to this solicitation and the resulting contract via HIEPRO.

1.6.1 During the RFP Process, an Offeror shall contact the State POC for matters regarding the RFP, except to the extent directed otherwise by the State POC or as set forth herein. In that case, Offeror shall contact

the State governmental unit or employee designated by and for the purposes directed by the State POC. An Offeror's failure to contact the State POC as the first point of contact may result in the Offeror receiving misinformation or in misunderstanding some aspect of the RFP Process which may adversely affect its Proposal and the evaluation of the Proposal. The State has no responsibility for any such misinformation or misunderstanding.

1.6.2 Each Offeror shall designate its own employee to serve as its point of contact ("Offeror POC") to communicate on its behalf with the State POC. The Offeror may designate different employees to serve as its Offeror POC upon reasonable notice to the State POC, if and when Offeror becomes an Offeror or a Priority-Listed Offeror, provided there shall be only one individual serving as the Offeror POC at any time unless otherwise permitted by the State.

1.6.3 If and when the State enters into a Contract with the selected contractor, the point of contact will be the State's Contract Administrator or designee.

1.7 Definitions

The following definitions apply to this RFP.

"Addendum and Addenda" means an amendment and amendments to the RFP, Exhibit, or Appendix.

"AG" means Attorney General of the State of Hawaii.

"Appendices" means Appendices A through L RFP Document.

"BAFO" means Best and Final Offer.

"Business Day" means any day that is not a Saturday, Sunday or public holiday in the State of Hawaii.

"Contract" means the contract entered into pursuant to this RFP by and between the State and the Enterprise Financial Solution contractor

"Contract Bond" means the approved form of security to ensure completion and satisfactory performance of the contract in accordance with the terms of the contract and to guarantee full payment of all claims for labor, materials and supplies furnished, used or incorporated in the work.

"Contractor(s)" means the Offeror selected by the State pursuant to this RFP who enters into the Contract with the State.

“COTS” means Commercial Off-The-Shelf software typically requires configuration that is tailored for specific uses within the defined parameters of the product and not the result of customizations.

“EFS” means the Enterprise Financial Solution.

“ETS” means the State of Hawaii Office of Enterprise Technology Services, a division of the Department of Accounting and General Services.

“Evaluation Committee” means the committee that will evaluate the Offers and determine in writing who provides the best value to the State; it is established by the Procurement Officer and consists of at least three State employees.

“General Conditions” means the General Conditions issued by the Department of the Attorney General of the State of Hawaii, referred to as Form AG-008.

“HAR” means Hawaii Administrative Rules.

“Head of the Purchasing Agency” means the head of any agency with delegated procurement authority by law or from a chief procurement officer of the STATE to enter into and administer contracts.

“Hosting Services” means an Offeror-Hosted option as proposed by the Offeror and as described in section 4.1.8.2.

“HRS” means Hawaii Revised Statutes.

“HST” means Hawaii Standard Time.

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

“NDA” means Nondisclosure Agreement.

“Offer” or “Proposal” means a Proposal from an Offeror submitted in response to the RFP.

“Offeror” means any person or entity that intends on submitting a Proposal; provided that after the deadline for submission of proposals, Offeror shall mean any person or entity that has submitted a Proposal.

“Parties” means the State and the Contractor.

“Procurement Officer” means the Enterprise Technology Services Procurement Officer.

“Proposal” or “offer” means a proposal submitted in response to this RFP.

“Purchasing Agency” means any governmental body which is authorized by law or rules, or by way of delegation to enter into contracts for procurement of goods, services, or construction.

“Release Date” means the date the RFP is issued. “RFP” means the Request for Proposals document, exhibits, appendices, and addenda.

“RFP Process” means the procurement process conducted by the State under this RFP.

“RFP Requirements” means the technical and other specification requirements described in: (i) this RFP; (ii) the Performance Standards; and (iii) all applicable State and federal policies, laws, regulations, and government accounting standards (i.e., GASB and GAAP).

1.7.1 EFS-Related Terms

The State has established a statewide IT strategy with respect to several IT objectives and projects. Part of this statewide strategy includes the Enterprise Resource Planning (ERP) Program. Under the ERP Program is the Enterprise Financial System (EFS) Project.

The EFS related terms used in this RFP are as follows: (a) the “EFS System,” which consists of hardware and software, including “COTS” required to meet the “RFP Requirements;” (b) the “EFS Services,” which are services provided in connection with the EFS System; (c) the “EFS,” which consists of the combination of EFS System, the EFS Services, and other associated services; (d) a “Project,” which includes “Implementation Services”, etc., to implement the RFP Requirements in whole or in part; and (e) an “EFS Project.”

1.8 COMPETENCY OF OFFEROR

Prior to or after the deadline to submit a Proposal, the State may submit written questions to any Offeror regarding an Offeror’s facilities, equipment, experience, personnel, financial status or any other factors relating to the ability of the Offeror to furnish the goods or services being solicited by this RFP. The Offeror shall reply through written response signed by the person who signs the Proposal. Any Offeror who fails to respond to the State shall be considered non-responsive.

The State reserves the right to visit an Offeror’s place of business to inspect its facilities and equipment and to observe its methods of operation in order to facilitate evaluation of performance capabilities.

1.9 PROPOSAL INCORPORATES RFP

The RFP, whether attached to the Proposal or not, shall be considered a part of the Proposal. Offeror shall not alter the RFP; any alterations made by the Offeror may be cause for rejection of the Proposal.

1.10 PREPARATION OF PROPOSAL

An Offeror may submit only one Proposal in response to the RFP. If an Offeror submits more than one Proposal, all Offeror's Proposals shall be rejected. Similarly, an Offeror may submit only one offer for each RFP Requirement. If an Offeror submits more than one offer for each RFP Requirement, then all offers for that RFP Requirement shall be rejected.

Proposals submitted by competing subsidiaries or jointly owned companies shall be accepted if submitted with a certificate of non-collusion, sworn to before a notary, which acknowledges that the proposal is without collusion.

1.11 MODIFICATION AND WITHDRAWALS OF PROPOSALS

Proposals may be modified or withdrawn at any time prior to the deadline for submitting Proposals. Any Proposal received after the deadline for submitting Proposals shall be rejected and returned to the Offeror.

1.12 REJECTION OF PROPOSALS

Proposals shall be rejected for reasons including but not limited to the following: the proposal is unsigned by the offeror; the proposal is noncompliant with applicable law or contains unauthorized additions or deletions of any portion of the RFP, proof of collusion exists, in which case, all Proposals involved in the collusive action will be rejected and any participant to such collusion will be barred from future solicitations until reinstated.

1.13 DEBARMENT OR SUSPENSION OF OFFERORS

The chief procurement officer may debar or suspend a person or entity for cause from consideration for award of all public contracts and from performance on any public contract in accordance with HRS 103D-702.

1.14 ACCEPTANCE OF PROPOSAL

a. Acceptance of a Proposal, if any, will be made within 180 calendar days after the opening of the Proposals. The prices quoted by the Offeror shall remain firm for the 180-day period. Unless otherwise provided, each individual item or group of items will be awarded to the responsive and responsible Offeror whose Proposal complies with the RFP. The Offeror must have the ability to perform as required by the contract terms. The State shall be the sole judge of product or vendor capability.

b. If the offer is rejected or if the vendor to whom the contract was awarded fails to enter into the contract and furnish satisfactory security, if applicable, the State may, at its discretion, award the contract to the next lowest or remaining responsible Offeror or may publish another call for proposals; provided in the case of only one remaining responsible Offeror, the head of a purchasing agency may negotiate with such Offeror to reduce the scope of work, if available funds are exceeded, and to award the contract at a price which reflects the reduction in the scope of work.

c. The head of a purchasing agency further reserves the right to cancel the contract award at any time prior to execution of the contract by all parties, without any liability to the awardee and to any other offeror.

1.15 EXECUTION OF CONTRACT

No such contract shall be considered binding upon the State until the contract has been fully and properly executed by all the parties thereto and the State Comptroller has, in accordance with Section 103D-309, HRS, endorsed thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract; with the exception of a multi-term contract, whereby, the State Comptroller shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts, that is sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal year of each term of the multi-year contract.

1.16 CONTRACT PERFORMANCE AND PAYMENT BONDS

Contract performance and payment bonds will not be required for this RFP.

1.17 FAILURE TO EXECUTE CONTRACT

If the Offeror to whom a contract is awarded fails or neglects to enter into the contract within ten days after such award or within such further time as the procurement officer may allow, the procurement officer may thereupon award the contract to the next lowest responsible offeror or may call for new offers, whichever method is deemed in the best interest of the STATE.

1.18 PAYMENT

Section 103-10, HRS, provides that the State shall have thirty (30) calendar days after receipt of an invoice or satisfactory delivery of the goods or performance of services to make payment. For this reason, the State will reject any Proposal submitted with a condition requiring payment within a shorter period. Further, the State will reject any Proposal submitted with a condition requiring interest payments greater than that allowed by §103-10, HRS.

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

1.19 TERMINATION FOR UNAVAILABILITY OF FUNDS

The State reserves the right to terminate the Contract for unavailability of funds. The State shall give notice no less than thirty (30) days prior to termination for unavailability of funds and shall specify a date of termination. The Contractor shall be reimbursed for all work, including deliverables, completed up through the date of termination.

1.20 SOFTWARE DEVELOPMENT BUSINESS PREFERENCE

A price preference shall be given to qualifying Hawaii software development businesses. For purposes of determining price only, offers received from all other Offerors shall be increased by ten per cent.

Offerors seeking a preference must be certified in accordance with HAR section 3-124-33. Forms may be found at: <http://spo.hawaii.gov/wp-content/uploads/2014/02/spo-009.pdf>.

The contract amount of any contract awarded shall be the original offer price.

1.21 CERTIFICATION OF OFFEROR CONCERNING WAGES, HOURS, AND WORKING CONDITION OF EMPLOYEES SUPPLYING SERVICES

In accordance with HRS section 103-55, all Offerors shall certify that the services to be rendered shall be performed by employees paid at wages or salaries not less than the wages or salaries paid to public officers and employees for similar work; and that all applicable federal and state laws relating to workers compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

1.22 RESPONSIBILITY OF OFFERORS

Upon award of the Contract, Offerors shall be compliant with all laws governing entities doing business in the State, including the following listed below. Failure to provide evidence of compliance upon award of the Contract may result in the loss of the award. The State reserves the right to verify Offeror's compliance with the respective issuing agencies. Compliance with all applicable laws shall be maintained throughout the term of the Contract:

1. HRS chapter 237, General Excise Tax Law;
2. HRS chapter 383, Hawaii Employment Security Law;
3. HRS chapter 386, Worker's Compensation Law;
4. HRS chapter 392, Temporary Disability Insurance;
5. HRS chapter 393, Prepaid Health Care Act; and
6. HAR section 3-122-112(3), Certificate of Good Standing.

1.22.1 HAWAII COMPLIANCE EXPRESS (HCE)

Vendors may use the Hawaii Compliance Express (HCE), an electronic system that allows persons or entities doing business with the State to quickly and easily demonstrate compliance with applicable laws. It is an online system that replaces the necessity of obtaining paper compliance certificates from the Department of Taxation, Federal Internal Revenue Service, Department of Labor and Industrial Relations, and the Department of Commerce and Consumer Affairs.

Offerors intending to use HCE to demonstrate compliance are advised to register on HCE as soon as possible at <https://vendors.ehawaii.gov>. The annual registration fee is \$12.00, and the Certificate of Vendor Compliance is accepted at execution of a contract and at final payment.

1.22.2 CERTIFICATES OF COMPLIANCE

Offerors not utilizing HCE shall provide current certificates of compliance via email to the Contract Administrator. Timely applications for certificates of compliance are the responsibility of the Offeror.

1.22.3 HRS CHAPTER 237 TAX CLEARANCE REQUIREMENT FOR AWARD

Pursuant to section 103D-328, HRS, the Offeror shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate shall have an original green certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate.

The *Tax Clearance Application*, Form A-6, and its completion and filing instructions, are available on the DOTAX website: <http://tax.hawaii.gov/forms/>.

1.22.4 HRS CHAPTERS 383 (UNEMPLOYMENT INSURANCE), 386 (WORKERS' COMPENSATION), 392 (TEMPORARY DISABILITY INSURANCE), AND 393 (PREPAID HEALTH CARE) REQUIREMENTS FOR AWARD

Pursuant to Section 103D-310(c), HRS, the Offeror shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and

Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue.

The *DLIR Form LIR#27 Application for Certificate of Compliance with Section 3-122-112, HAR*, and its filing instructions are available on the DLIR website: <http://labor.hawaii.gov/forms/>.

1.22.5 COMPLIANCE WITH SECTION 103D-310(C), HRS, FOR AN ENTITY DOING BUSINESS IN THE STATE.

The Contractor shall be required to submit a *Certificate of Good Standing (COGS)* issued by the State of Hawaii Department of Commerce and Consumer Affairs (DCCA) - Business Registration Division (BREG). The Certificate is valid for six (6) months from date of issue.

Information regarding online business registration and the COGS is available at <http://cca.hawaii.gov/breg/>.

1.22.6 REQUIRED REVIEW

Before submitting a Proposal, each Offeror must thoroughly and carefully examine this RFP, all attachments, Addendum, and any other relevant document, to ensure Offeror understands the requirements of the RFP. Offeror must also become familiar with State, local, and Federal laws, statutes, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work required.

Should Offeror find defects and questionable or objectionable items in the RFP, Offeror shall notify the State in writing prior to the deadline for written questions as indicated in the Section 1.3. This will allow the issuance of any necessary corrections or amendments to the RFP by Addendum.

1.22.7 OFFEROR TRANSMITTAL LETTER

All Offerors are required to complete and submit the Offeror Transmittal Letter. See Exhibit 1.

1.22.8 OFFER GUARANTY

An offer guaranty is NOT required for this RFP.

1.22.9 TAX LIABILITY AND COUNTY SURCHARGE

Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237, and if applicable, taxable under HRS Chapter 238. Offerors are advised that they are liable for the Hawaii general excise tax (GET) at the current

4.712% rate for transactions made on Oahu. If, however, an Offeror is a person exempt by law from paying the GET and therefore not liable for the taxes on this solicitation, the Offeror shall state its tax-exempt status and provide proof of the exemption from the Hawaii Department of Taxation.

1.22.10 Federal I.D. No. And Hawaii General Excise Tax License I.D

Offeror shall submit its current Federal I.D. No. and Hawaii General Excise Tax License I.D. number in the space provided on the Offeror Transmittal Letter, thereby attesting that the Offeror is doing business in the State and that Offeror will pay such taxes on all sales made to the State.

1.23 CONFIDENTIALITY

If an Offeror in good faith considers any portion of its Proposal or correspondence with the State to be confidential, the Offeror shall identify, justify, and separate the confidential information as set forth in Exhibit 1, Form OF-3, and submit the form with its Proposal. Confidential information must be readily separable in order to facilitate public access to the non-confidential portion of the Proposal. Costs included or required to be included in an Offer are not considered confidential and will not be withheld from public access.

Requests for access to information deemed confidential by an Offeror shall be subject to written determination by the Attorney General in accordance with HAR §3-122-58.

1.24 PROTEST PROCEDURES

Pursuant to HRS §103D-701 and HAR §3-126-3, an Offeror who is aggrieved in connection with the solicitation or award of a contract may submit a protest. Any protest shall be submitted in writing to the Contract Administrator at:

Todd Omura
IT Governance Officer
Office of Enterprise Technology Services
1151 Punchbowl Street, Room B10
Honolulu, HI 96813

The notice of award, if any, resulting from this solicitation shall be posted on HIEPRO.

1.25 CONTRACT EXECUTION

The successful Offeror receiving the award shall enter into a written contract to be signed by the Contractor and returned within ten (10) working days.

No performance or payment bond is required for this contract.

No work is to be undertaken by the Contractor prior to the commencement date specified on the Notice to Proceed. The State is not liable for any work, costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor prior to the official starting date.

If an option to extend is mutually agreed upon, the Contractor shall be required to execute a supplemental contract for the additional extension period.

1.26 LIABILITY INSURANCE

In addition to the insurance requirements in the General Conditions, Exhibit 5, each insurance policy required by this contract, with the exception of the Professional Liability policy, including a Subcontractor's policy, shall contain the following clauses:

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

A Waiver of Subrogation shall apply to the General Liability, Automobile Liability and Worker's Compensation insurance policies and shall be in favor of the State of Hawaii.

Prior to award of the contract, the Contractor agrees to deposit with the State of Hawaii certificate(s) of insurance necessary to satisfy the State that the insurance provisions of this RFP have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the State during the entire term of the contract, if any, including those of its Subcontractor(s), where appropriate. Upon request by the State, Contractor shall be responsible for furnishing a copy of the policy or policies.

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

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

1.27 MODIFICATION AND WITHDRAWAL OF OFFERS

- 1.27.1** Offerors may modify or withdraw a Proposal prior to the deadline for submittal of offers via the HIEPRO system.

1.27.2 Any change, addition, deletion of attachment(s) or date entry of an Offer may be made prior to the deadline for submittal of offers via the HIEPRO system.

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

1.28.4 Priority-Listed Offerors may modify and resubmit Proposals after the conclusion of discussions with the Priority-Listed Offerors but prior to the deadline for submission of BAFOs, if applicable.

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

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

1.27.7 Technical irregularities are matters of form rather than substance evident from the Offer document, or insignificant mistakes that can be waived or corrected without prejudice to other Offerors; that is, when there is no effect on price, quality or quantity. If Offeror Presentations, Demonstrations and Discussions sessions are not held, or if the deadline for submission of BAFOs has passed, the Procurement Officer may waive such irregularities or allow an Offeror to correct them at the State's reasonable discretion.

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

1.28 CONTRACT CHANGES – UNANTICIPATED AMENDMENTS

During the course of the Contract, the Contractor may be required to perform additional work which shall be within the general scope of the Contract. When additional work is

required, the Contract Administrator will provide the Contractor a written description of the additional work and request the Contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work.

Contractor will not commence additional work until the Contract Administrator has secured the required State approvals necessary and an executed written contract amendment has been issued.

1.29 RE-EXECUTION OF WORK

The Contractor shall re-execute any work that fails to conform to the requirements of the Contract and shall immediately remedy any defects due to faulty work by the Contractor.

Section 2: Solicitation Information

This Request for Proposals (“RFP”) is issued by the State of Hawaii (“State”). The issuing office is the Office of Enterprise Technology Services, Department of Accounting and General Services. The Office of Enterprise Technology Services shall administer any contract that results from this RFP. This RFP is a competitive sealed proposal process pursuant to HRS §103D-303, and HAR Title 3, Subtitle 11, Chapter 122, Subchapter 6, the provisions of which are incorporated by reference and made a part of this RFP.

2.1 Governing Laws and Regulations

This procurement is conducted by the Office of Enterprise Technology Services, in accordance with the State Procurement Code. Information about the State and its governing laws are available at: <http://spo.hawaii.gov/>.

This procurement shall be governed by the regulations and laws of the State of Hawaii. Venue for any administrative or judicial action relating to this procurement, evaluation, and award shall be in the State of Hawaii, City and County of Honolulu.

2.2 Electronic Procurement

- 2.2.1** The State has established the Hawaii State eProcurement (HIEPRO) System to promote an open and transparent system for vendors to compete for state contracts electronically. Offerors must be registered on HIEPRO. Registration information is available at the State Procurement Office (SPO) website: <https://hiepro.ehawaii.gov/welcome.html>, select HIEPRO Vendor Registration and then Vendor Registration Guide.

2.2.2 The RFP Process, including issuance of the RFP, submission of Proposals, issuance of Addenda, and changes to the Schedule and Significant Dates in Section 1.3 shall be conducted through HIEPRO. The State shall not be responsible for the failure of any Offeror to receive the RFP Process information.

2.2.3 The Contractor shall be subject to a one-time mandatory HIEPRO fee of .75% (.0075) of the award amount or \$5,000, whichever is less. HIEPRO is administered by Hawaii Information Consortium, LLC (HIC). HIC shall invoice the Contractor directly for payment of the HIEPRO fee. Payment must be made to HIC within thirty (30) days from receipt of invoice.

2.2.4 HIEPRO Instructions. Offeror shall review all instructions located in HIEPRO. Offerors are responsible for ensuring that all necessary files are attached to its Proposal prior to the deadline for submission of Proposals.

The file size limit on HIEPRO is 100MB. Files exceeding 100MB should be submitted as multiple files, each under the 100MB file size limit.

Offerors are advised that they should not wait until the last minute to submit their Proposal on HIEPRO. Offerors should allow for ample time to review its Proposal, including attachments, prior to the Proposal deadline.

2.3 Pre-Proposal Conference

A pre-Proposal conference will be held on December 15, 2020; 12:00 P.M. (Noon) HST electronically via the Microsoft Teams application. The link to attend is:

https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F_%23%2F%2Fmeetup-join%2F19%3Ameeting_OGJIMTY3MWYtYjk3MS00MjUyLTk0NTEtNDA1MDE5MGMwOGVm%40thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%25223847dec6-63b2-43f9-a6d0-58a40aaa1a10%2522%252c%2522Oid%2522%253a%2522a6a746ae-fff5-4de7-81a0-ce032bece4b6%2522%257d%26CT%3D1605049478291%26OR%3DOutlook-Body%26CID%3D0ED2048F-004D-400B-B3FF-7CB7BBAE22CF%26anon%3Dtrue&type=meetup-join&deeplinkId=5b295ad5-f296-478a-999b-bef5b143f45e&directDI=true&msLaunch=true&enableMobilePage=true&suppressPrompt=true

If an Offeror also needs a dial-in number for audio attendance only, they may use:

Phone number: 1-808-829-4852 United States, Honolulu (Toll)
Conference ID: 801 555 994#

Attendance at the pre-Proposal conference is optional. A summary of the pre-Proposal conference will be provided by Addendum posted on HIEPRO.

All questions regarding the pre-Proposal conference shall be directed via email to the State POC.

2.4 Questions Regarding RFP

2.4.1 If an Offeror believes that any provision of the RFP is unclear, potentially defective or would prevent it from providing a meaningful Proposal, the Offeror shall submit questions through HIEPRO to the State POC on or before the deadline indicated in Section 1.3. Each question shall identify the page, section number, paragraph, and line or sentence of the RFP to which the question applies. The State POC will respond by the date indicated in Section 1.3. Written questions and the State's response will be posted on HIEPRO.

The source of the question will not be posted; Offerors are cautioned to exclude any context which may reveal the source. The State may reword submitted questions in order to protect the identity of the source. The State may but is not required to issue Addenda in response to written questions submitted.

2.4.2 The Offeror's Library is intended to provide clarification to Offerors on the State of Hawaii's current systems, business processes, laws and rules. If an Offeror believes that any portion of the Offeror's Library is unclear or would prevent it from providing a meaningful Proposal, the Offeror shall submit questions requesting clarification to the State POC on or before the deadline indicated in Section 1.3. Each question shall specifically identify the portion of the Offeror's Library to which the question applies, such as page, section number, paragraph, line, or sentence. The State POC will respond by the date indicated in Section 1.3. The State may but is not required to issue Addenda in response to written questions submitted.

2.4.3 An Offeror shall clearly identify which of its questions apply to the RFP and which apply to the Offeror's Library. An Offeror shall not submit one question that applies both to the RFP and the Offeror's Library. If the State determines that a single question applies to both the RFP and the Offeror's Library, then the question shall be deemed to be a question directed to the Offeror's Library.

2.5 Proposal Due Date

Proposals must be received by the due date and time indicated in Section 1.3.

2.6 Cancellation of Procurement Part of or Entire Proposal

The State reserves the right to cancel this RFP, reject any and all Proposals in whole or in part, and waive any defects, when it is determined to be in the best interest of the State, pursuant to HAR §3-122-96 thru HAR §3-122-97.

2.7 Letter of Intent to Submit Offer Required

Offerors interested in submitting an Offer shall submit a non-binding Letter of Intent to Submit Offer via email to todd.t.omura@hawaii.gov on or before the date indicated in Section 1.3.

2.8 Right to Accept All or Portion of Proposal

Unless otherwise specified in the RFP, the State may accept any item or combination of items of any Proposal unless the Offeror expressly restricts an item or combination of items in its Proposal and conditions its Proposal on receiving an award for all items for which it provided a Proposal. If the Offeror so restricts its Proposal, the State may consider the Offeror's restriction and evaluate whether the award on such basis will result in the best value to the State. The State may otherwise determine at its sole discretion that such restriction is non-responsive and may reject the Proposal.

2.9 Additional Information

The Offeror shall provide additional information regarding aspects of an Offeror's Proposal within five (5) business days of the State's request unless the State specifies another period. Each Offeror shall submit only one Proposal. If an Offeror submits more than one Proposal, the State reserves the right to reject the Proposal or dismiss the Offeror from the RFP Process, or both.

2.10 EFS Components

The table below provides a summary of the components for the EFS and identifies applicable requirements and related appendices. Detailed information is found in the Appendices.

EFS Component	Requirements	Description	Appendix
EFS System	Functional Requirements	Core Phase	Appendix A-1, Core Phase Requirements
EFS System	Functional Requirements	Expansion Phase	Appendix A-2, Expansion Phase Requirements
EFS System	Functional Requirements	Optional Phase	Appendix B, Optional Phase Requirements
EFS System	Technical Requirements	-Technical Architecture -Solution Architecture -Solution Technology	Appendix C, Technical Requirements
EFS Services	Implementation Services Requirements	-Project Team Facilities -Implementation Services <ul style="list-style-type: none"> - Project Planning - Initial Analysis and Design - Final Analysis and Design - Configuration and Development - Testing and Training - Deployment and Go-Live Support - Warranty Services 	Appendix D, Implementation Services Requirements
EFS Services	Ongoing Services Requirements	- Hosting Services <ul style="list-style-type: none"> - Software-as-a-Service (“SaaS”) - Offeror-Hosted - Maintenance and Operations (“M&O”) Services - Business Process Outsourcing (“BPO”) Services - Project Team Facilities	Appendix E, Ongoing Services Requirements

EFS Services	Ongoing Services Requirements	Service Levels	Appendix F, Service Level Agreement Requirements
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Section 3: Requirements

This section contains the minimum requirements a Proposal must contain in order to be considered for the evaluation phase. All items described in this section are non-negotiable. All Offerors must state willingness and demonstrate the ability to satisfy these requirements in its Proposal

3.1 Compliance with Laws

Offerors must at all times be in compliance with all laws governing entities doing business in the State. Proof of compliance shall be included in Offerors' Proposals.

3.2. Staffing Plan

The Offeror must demonstrate through staff resumes and past project references that the Offeror's team is fully-qualified, trained, and experienced to be able to successfully complete every deliverable specified in this RFP, as detailed in Appendix K, Proposed Project Organization and Staffing.

3.3 Proposal Form

Each Proposal shall be submitted in the form and manner specified in "Exhibit 1, Procedures for Submitting a Proposal."

3.4 Contents of Proposal

Each Proposal shall be deemed to be compliant with all terms and provisions of this RFP and all materials relied on by the Offeror in its presentation(s) to the State. Each Proposal shall be self-contained and submitted as a complete Proposal in accordance with "Exhibit 1, Procedures for Submitting an Offer". There shall be no references to external documents and sites.

3.5 Software

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

3.6 Materials Submitted Become Property of the State

Each Proposal shall become the property of the State and be made available for public inspection pursuant to HAR section 3-122-58, regardless of whether the Proposal is rejected by the State, the Offeror is dismissed from the RFP Process, or the Proposal is returned to the Offeror in whole or in part.

3.7 Offeror Teams

Two vendors may elect to act jointly to provide the EFS. If so, they shall submit a single Proposal and designate one vendor as the prime Offeror and the other as its subcontractor.

A single vendor shall not be a prime Offeror on one Proposal and a subcontractor on another Proposal.

3.8 Contractor Responsibility for Subcontractors

Subcontractors providing services shall meet the same requirements and provide the same quality and timeliness of service required of the Contractor. No subcontract shall relieve the Contractor of Contractor's responsibilities for the services the Contractor is required to provide under the Contract. The Contractor shall manage the quality and performance, project management and schedules, and the timely start and completion of services performed by each of its Subcontractors. The Contractor shall be solely responsible and accountable for the completion of all services it has subcontracted.

3.9 Removal of Subcontractors

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

3.10 Right to Retain Subcontractors

The State shall have the right to directly retain any Subcontractor after the expiration, termination or suspension of the Contract under which it is retained.

3.11 Additional Contractor Requirements

Each Contractor shall:

1. Adhere to its Contract with the State;
2. Provide all labor, materials, and equipment necessary to meet the Contract requirements;

3. Communicate contract requirements to its Subcontractors' personnel and direct and coordinate project activities to ensure that the services progress efficiently and are completed on schedule;
4. Obtain and maintain the insurance coverage set forth in "Exhibit 5, Selected Supplemental Conditions";
5. Ensure that all its employees and its Subcontractors' employees can communicate effectively with State employees;
6. Ensure that it is current with all payments and registration fees and similar financial obligations owed to the State during the term of its Contract with the State;
7. Fully cooperate and maintain effective communication with the State and cooperate in the resolution of problems, suspected problems, or potential problems;
8. Resolve problems with all vendors and providers to the State not engaged pursuant to this RFP whose services are related to the EFS Services; and
9. Immediately notify the Contract Administrator upon discovery that it is unable or unlikely to meet the due date for a deliverable or work product. A plan for cure and a revised schedule for delivery shall be included in the above notification. The schedule shall include a statement of the impact on subsequent due dates. The Contractor shall meet with the State and agree on a final revised schedule.

3.12 Payment

Pursuant to HRS §103-10, the State shall have thirty (30) calendar days after receipt of invoice or satisfactory completion of projects to make payment. For this reason, the State will reject any offer submitted with a condition requiring payment within a shorter period. Further, the State will reject any offer submitted with a condition requiring interest payments greater than that allowed by HRS §103-10, as amended.

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

3.13 Audits

Contractor shall maintain complete, accurate, and up-to-date records and supporting documentation, including with respect to all transactions, authorizations, changes, implementations, electronic document accesses, reports, filings, analyses, procedures, controls, records, data or information created, generated, collected, processed or stored by Contractor in the performance of the services and its obligations under the Contract (collectively, "Contract Records" in accordance with the terms of the Contract.

Contractor shall periodically provide backup copies of the then-current versions of the Contract Records to the State in accordance with the schedule reasonably established by the State.

SOC2 Audit:

At Contractor's expense, Contractor shall engage a third party to perform an SOC2 audit (Service Organization Control 2) annually, based on a June 30th end date. The SOC2 audit shall be provided to the State within 30 days.

CAFR Audit:

Contractor shall cooperate and participate to the fullest extent possible with the State for the State's annual Comprehensive Annual Financial Report ("CAFR") audit. This shall include but not be limited to Contractor providing to the State EFS financial data, and narratives and work documents describing how the EFS functions.

Other Audits:

The State shall have the right, in the State's sole discretion, to audit Contractor for any other reason related to the Contract, including but not limited to, audits concerning performance, costs, and security. The State shall have the right to conduct audits at a Contractor-provided (including Subcontractors of Contractor) hosting site at any time (including without prior notice) by physical inspection or electronic auditing and at Contractor (including Subcontractors) command centers by physical inspection and through electronic auditing, including, in each case, through computer-assisted remote access to the Contract Records.

Contractor, its Subcontractors and their respective employees with supervisory responsibility for the subject matter, shall: (a) cooperate with any audit in a timely manner; (b) make available complete, accurate, and current Contract Records; and (c) provide the timely availability of all persons necessary for any audit. Contractor shall provide auditors with adequate private workspace in which to perform each audit as well as access to photocopiers, telephones, facsimile machines, computer hook-ups, and any other facilities or equipment needed for the performance of such audit. Contractor shall be excused from providing information otherwise required pursuant to this section only to the extent that Contractor is prevented from providing the State with such information as a result of an enforceable obligation of confidentiality or nondisclosure owed by Contractor to a third-party.

In the event that any audit reveals that any costs paid by the State exceed proper costs permitted pursuant to the Contract, Contractor shall (a) reimburse the State, within thirty (30) days after receipt of notice thereof from the State, such sum, with interest from the date upon which such sum was first paid by the State until the date on which Contractor makes such reimbursement, at the Prime Rate plus one percent (1%), and (b) if the over-billed costs exceed the proper amount by more than five

percent (5%), Contractor shall pay the reasonable fees, costs and expenses incurred by the State in connection with the audit.

The State may audit the physical and electronic security of Contractor's operations, which may include interviews with Contractor personnel having responsibility for security for the services and information and data of the State and observations of Contractor's day-to-day operations. The State has the right to conduct such audit on an unannounced basis or the State may conduct such audit covertly with only the express knowledge of key trusted Contractor personnel who shall not divulge such covert audit.

As used in this section, references to the State shall include its designee such as an accounting firm or other third-party; References to Contractor shall include the Contractor's Subcontractors and their personnel. Contractor shall have equivalent audit rights to those specified in this section with respect to its Subcontractors and their personnel, and the State shall be the third-party beneficiary of such audits. Under no circumstances shall Contractor limit or restrict the State's rights under this section as a result of Contractor's subcontracting part of the services.

3.14 Performance Bond

The State will not require the Contractor to provide a performance bond or evidence of its ability to provide a bond as part of its Proposal. However, the State will require the following as indicated in Exhibit 5:

- a) Letter of Credit; and
- b) Guaranty.

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

EFS Performance Standards have been outlined and specified in "Appendix F: Service Level Agreement Requirements."

3.15 Exhibit 4 and Exhibit 5

Exhibit 4, State Attorney General (AG) General Conditions and Exhibit 5, Selected Supplemental Conditions" shall be read in conjunction with each other. In the event of a conflict between any provision of Exhibit 4 and Exhibit 5, the provision that provides the State with the greater rights or greater protections, as determined by the State, shall control.

Section 4: Proposal Requirements

4.1 Objectives

Proposals shall be prepared in a straightforward and concise manner, in a format that is reasonably considered and appropriate for the purpose. Emphasis will be on completeness, clarity, and content.

Proposals shall be considered a complete plan for accomplishing the requirements described in this RFP and the requirements of any supplemental tasks the Offeror chooses to include.

The Proposal shall describe in detail the Offeror's ability and availability of services to meet the goals and objectives of this RFP.

- 4.1.1** The State requires an EFS using software that will be deployed with as little customization as possible. Techniques to avoid customization should include, among other things:
 - 4.1.1.1** Configuring the EFS software using standard configuration parameters.
 - 4.1.1.2** Reengineering the State's business processes to effectively use the process models inherent in the EFS software.
 - 4.1.1.3** Using third-party software (that is not part of the EFS software suite) only when necessary and cost-justified.
- 4.1.2** The State requires a phased implementation, to include a Core Phase, Expansion Phase, Optional Phase
- 4.1.3** Service Level Agreement Objective

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

4.1.4 Network Objective

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

- 4.1.4.1** Latency: The EFS System may be sensitive to network latency for its proper function. Minimizing latency factors resulting from the distance between end-users and endpoint systems and the primary data center may demand data center proximity to or location(s) in the State. The State's goal is to select a hosting solution that can guarantee a specific network response time to meet the RFP Requirements.
- 4.1.4.2** Bandwidth and Usage: The EFS System will transfer large amounts of data, which can increase network utilization costs. The State's goal is to have Offerors size the network connection to maximize utilization without incurring any unexpected network connectivity expenses for the State.
- 4.1.4.3** Resiliency and Recovery Objective: The mission-critical nature of the EFS requires application availability and resiliency. The recovery time objectives require meeting the objectives for the following:
- 4.1.4.4** Data Protection: The EFS requires high levels of data protection, ranging from tape backup to synchronously replicated data on mirrored storage sub-systems with regular data snapshots and archiving. The State's goal is to achieve the required level of protection using cost-effective means in order to meet resiliency and recovery needs.
- 4.1.4.5** Data Center Reliability: EFS System resiliency may require supporting infrastructure resiliency. Data center infrastructure redundancy and design must improve IT system availability and therefore application and data availability. The goal is to ensure that an Offeror's hosting facilities meet the right level of resiliency for the EFS while minimizing expense to the State.
- 4.1.4.6** Protection from Extreme Weather and Natural Disasters: The Business Continuity Plan requires recovery facilities to be geographically distant from the facilities where the production applications operate. The goal is to have the

EFS meet required application recovery time and point objectives specified in the RFP Requirements at a low expense to the State. For example, these goals can be met by implementing anything from reserved space with a disaster recovery provider to the application running in lockstep for continuous availability at a geographically distant data center.

4.1.5 Flexibility Objective

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

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

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

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

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

4.1.6 Security Objective

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

- 4.1.6.1** Encryption and Firewalls: The goal is to apply appropriate security zoning, technologies, and monitoring measures at low expense to the State.
- 4.1.6.2** Identity: Identity provisioning and management are required to enforce role-based access control for administrators and users of IT applications and infrastructure, as well as provide users single sign-on functionality from their department's identity management system. This includes allocating identity provisioning and management systems between enterprise systems and outsourced systems where required.

4.1.7 Regulatory Objective

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

- 4.1.7.1** Data Retention: Compliance with applicable regulatory requirements, such as Hawaii Revised Statutes, Hawaii Administrative Rules, and State regulations and policies, as well as State retention policies that will impact sourcing choices made to ensure retention and life cycle policies can be met.
- 4.1.7.2** Data Security and Protection: Data security is mandated for data that falls under requirements of Law, including but not limited to HRS Chapter 487J and the Payment Card Industry Data Security Standard (PCI DSS) , and for data that contains intellectual property and personally identifiable information. Implemented security measures are aligned with recognized frameworks such as National Institute of Standards and Technology (NIST) Cybersecurity Framework, and the Center for Internet Security (CIS) Controls.
- 4.1.7.3** Government Finance and Accounting Standards: Generally Accepted Accounting Principles (GAAP), Governmental Accounting Standards Board (GASB) Statements, Committee of Sponsoring Organizations of the Treadway Commission (COSO) Internal Controls, U.S. Office of Management and Budget Circulars, U.S. Office of Management and Budget Uniform Guidance and Cost Principals, HRS Title 5 - State Financial Administration.

4.1.7.4 Diligence in Ensuring Value to the State: The State reserves the right to secure a third-party Independent Verification and Validation (IV&V) consultant to assist the State in making sure that activities associated with the EFS brings value and adheres to all contract requirements.

4.1.8 Hosting Objective Options

Proposals are limited to the two options for hosting the EFS System described below in order of preference:

4.1.8.1 Option 1: Software as a Service (SaaS)

The Offeror hosts the EFS System, provides M&O Services, owns the hardware, and provides State access to subscription based EFS software or cloud EFS solution, and use of the resulting services (including data).

4.1.8.2 Option 2: Offeror-Hosted

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

Proposals offering Option 1: Software as a Service (SaaS) will be preferred over Proposals offering Option 2: Offeror-Hosted. Regardless of the hosting option proposed by the Offeror, if the primary data center is hosted in a facility located outside of the State of Hawaii, possible options for transferring the EFS System and data to another data center located within the State of Hawaii should be included as part of the response. The Offeror shall not host the EFS System outside of the United States.

4.1.9 Knowledge Transfer Objective

Each Offeror shall provide a methodology for an intensive knowledge transfer program tailored to the State's particular needs, taking into account that knowledge transfer shall be provided to the State's Project Team (including "boot camp" sessions for both functional and technical sub-teams) throughout all phases of the project. The objective is to successfully provide the State's Project Team with an in-depth understanding of the various EFS modules and components proposed for

implementation (including Ongoing Services), EFS configuration, application terminology, and as otherwise specified in the Appendices. The Contractor shall provide knowledge transfer for all components of the EFS, as well as all related third-party software and tools.

4.1.10 Enhanced End-User Training Objective

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

4.1.11 Business Process Reengineering Objective

The State requires standardization and automation to align with modern government accounting practices, as well as an adoption of a recommended Uniform Chart of Accounts found in the Offeror's Library. See Exhibit 2, Offeror's Library.

4.1.12 Organizational Change Management (OCM) Objective

The State requires an analysis of existing State accounting and finance processes, future changes required, and recommendations for how the State should address gaps.

4.1.13 Relationship Management Objective

The State requires an effective governance and relationship management process between the State and the Contractor, including with the Executive Governance Committee (defined in Exhibit 3). Requirements are indicated in Exhibit 3, Relationship Management.

4.1.14 Data Cleansing and Conversion Objective

Each Offeror shall develop and propose a strategy to cleanse and convert relevant legacy data into the EFS. Each Offeror shall either (i) identify the methodology and the approach for the implementation of tools and procedures to perform the State legacy data extraction, transformation and loading into the EFS System, or (ii) to make available requirements regarding the foregoing including those in Appendix A-1, Core Phase Requirements, Appendix A-2, Expansion Phase Requirements, Appendix B, Optional Phase Requirements.

4.1.15 Continuity of Contractor Personnel Objective

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

The Contractor shall make available management personnel and senior executives from the U.S. mainland (including with visits to Oahu) to its project team for meetings during Hawaii Standard Time Zone standard business hours in accordance with Exhibit 3, Relationship Management.

4.2 Proposal Structure and Content

Proposals must be detailed and concise. Each Proposal must be labeled and organized in a manner that is congruent with the requirements and terminology used in this RFP and must include a point by point response, structured in form and reference to the RFP, addressing all requirements as shown in Exhibit 1.

4.3 Compliance with RFP Requirements

Submission of a Proposal shall constitute an incontrovertible representation by the Offeror that the Offeror agrees to comply with every requirement of this RFP, and that the RFP is sufficient in scope and detail to indicate and convey a reasonable understanding of all terms and conditions of performance of the work required.

4.4 Each Offeror to Bear its Own Costs

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

Section 5: Evaluation and Award

5.1 Evaluation of Proposals

The Procurement Officer or the Evaluation Committee shall evaluate Proposals and BAFOs, as applicable. The evaluation will be based solely on the criteria described in this RFP.

5.2 Right to Waive Minor Irregularities

The State in its sole discretion reserves the right to waive, correct, or clarify minor irregularities in the Proposal, which in the judgment of the State does not equate to a material modification of the Proposal. The State also reserves the right in its sole discretion to waive certain minimum requirements provided that all of the otherwise responsive Proposals fail to meet the same minimum requirements and the failure to do so does not materially affect the procurement.

5.3 Initial Review and Award without Discussions

In the initial phase of the evaluation process, the State will review all Proposals timely received. Proposals not conforming to RFP requirements will be rejected.

The State reserves the right to award a contract on receipt of initial Proposals without providing an opportunity for discussion or Proposal revision, therefore Offerors are encouraged to submit their most favorable Proposal at the time established for receipt of Proposals.

5.4 Discussion with Priority Listed Offerors

The State, in its discretion, may hold discussions with the Offerors whose Proposals are determined to be acceptable or potentially acceptable (the "Priority Listed Offerors").

The State reserves the right to limit the priority list to the three (3) highest ranked, Priority Listed Offerors.

The State may invite Priority Listed Offerors to discuss their Proposals to ensure a

thorough, mutual, understanding. The State in its sole discretion shall schedule the time and location for these discussions, generally within the timeframe indicated in Section 1.3 Schedule and Significant Dates. The State may also conduct discussions with Priority Listed Offerors to clarify issues regarding the Proposals before requesting Best and Final Offers, if necessary.

Discussions will be conducted via the Microsoft Teams application arranged by the State and recorded for evaluation purposes only. These recordings will be treated as proprietary and confidential.

In conducting discussions, there shall be no disclosure of any information derived from Proposals submitted by competing Offerors.

5.5 Best and Final Offers

The State, in its sole discretion, may request each Priority Listed Offeror to submit its Best and Final Offer (BAFO). The request shall be issued in an Addendum which will provide guidance and additional instructions. BAFOs shall be submitted to the State POC via HIEPRO on or before the deadline provided in Section 1.3. If a Priority Listed Offeror fails to submit a BAFO, its last submitted offer shall be deemed to be its BAFO.

5.6 Award of Contract

A Notice of Award of the Contract shall be made to the responsible Offeror whose Proposal is determined the most advantageous to the State, taking into consideration all the evaluation factors set forth in this RFP.

The Notice of Award shall be made available on the Hawaii State eProcurement (HIEPRO) System at <https://hiepro.ehawaii.gov/welcome.html>. Failure by the chosen vendor to accept the award within five days of the Notice of Award will be deemed a rejection of the award.

The Contract shall include or be deemed to incorporate this RFP, the Contractor's Proposal or BAFO, Exhibit 4, State Attorney General (AG) General Conditions, Exhibit 5, Selected Supplemental Conditions, a Non-Disclosure Agreement (separate from the NDA to access the Offerors' Library), and other terms as may be agreed to by the State and the Contractor.

5.7 Debriefing

Pursuant to HAR §3-122-60, a non-selected Offeror may request a debriefing for information regarding the basis for the source selection decision and contract award. A written request for debriefing shall be made within three (3) working days after the posting of the award of the contract. To the extent practicable, the Procurement Officer or designee shall hold the debriefing within seven (7) working days of receipt of the written request for a debriefing.

Section 6: Evaluation Criteria and Scoring

There are seven evaluation criteria. Each criterion is composed of subcategories. Each subcategory is rated on a 0 to 5 scale as follows:

- 0- The Proposal fails to address the criterion, or the Proposal cannot be assessed due to missing or incomplete information. Offeror has not demonstrated sufficient knowledge of the subject matter or has grossly failed to explain how the requirement(s) will be met.
- 1- **Poor.** The criterion is inadequately addressed, Offeror demonstrates only a slight ability to comply, or there are serious inherent weaknesses.
- 2- **Fair.** The Proposal addresses the criterion, but there are significant deficiencies, or Offeror has not adequately explained how its services fit the requirement.
- 3- **Good.** The Proposal addresses the criterion; meets the requirements at a minimal level. Demonstrates knowledge and understanding of the subject matter, with no deficiencies noted.
- 4- **Very Good.** The Proposal addresses the criterion well, highly comprehensive.
- 5- **Excellent.** The Proposal addresses the criterion well and goes beyond the requirements of the RFP, providing added value. In addition, the response may cover areas not originally addressed within the RFP and include additional information and recommendations that would prove both valuable and beneficial to the State.

The rating for each subcategory shall be averaged to determine the rating for that respective criteria. Once the rating for each respective criterion is determined, the respective rating (the rate achieved) is converted to points by dividing the rate achieved by the total rate achievable, then multiplying by the maximum points possible for that criteria, as follows:

<u>Rate Achieved (based on subcategory average) / Total Rating Achievable</u>	X	Points Possible For that Criteria	= Points
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Example:

<u>4 / 5</u>	X	150	= 120

<u>1 / 5</u>	X	150	= 30

The evaluation criteria, criteria subcategories, and maximum points possible for each criterion, are listed below:

Evaluation Criteria	Evaluation Subcategory	Points Possible
Evaluation Criteria 1: Offeror Qualifications	<ul style="list-style-type: none"> • Offeror Background and Experience, and Offeror References • Financials 	150
Evaluation Criteria 2: Project Organization and Staffing	<ul style="list-style-type: none"> • Staffing Plans • Project Team • Staff Experience and References 	150
Evaluation Criteria 3: Business Solution - Functional Requirements	<ul style="list-style-type: none"> • Core Phase Requirements • Expansion Phase Requirements • Optional Phase Requirements 	150
Evaluation Criteria 4: Business Solution - Technical Requirements	<ul style="list-style-type: none"> • Technical Architecture • Solution Architecture • Solution Technology 	150
Evaluation Criteria 5: Business Solution - Implementation Services	<ul style="list-style-type: none"> • Implementation Plans included with offer • Work Plan and Schedule 	100
Evaluation Criteria 6: Business Solution - Ongoing Services	<ul style="list-style-type: none"> • Hosting Services • Maintenance and Operations Services • Business Process Outsourcing Services • Project Team Facility Requirements • Service Level Agreement Requirements 	150

Evaluation Criteria 7: Price	a. Price Proposal	150
Total Possible Points		1000

Evaluation Criteria 1: Offeror Qualifications

Offeror Qualifications will be evaluated and scored to a maximum of 150 points. This includes the Offeror's:

- a. Executive summary;
- b. Financials; and
- c. Background and experience in implementation of financial system components.

6.1 Executive Summary

Offeror shall submit an executive summary highlighting the major features of the Proposal. The State should be able to determine the essence of the Proposal by reading the executive summary. The executive summary shall be a maximum of twenty (20) pages in 12-point Arial font.

6.2 Financials

Offeror shall provide satisfactory evidence of organizational and financial stability. The following must be submitted and included with the Proposal:

- Company Year-End Financial Statements for the past 3 years of operation
- Company Financial ratios:
 - Solvency: $(\text{Net Income} + \text{Depreciation}) \div (\text{Short-Term Liabilities} + \text{Long-Term Liabilities})$
 - Current: $\text{Current Assets} \div \text{Current Liabilities}$
 - Total Debt/Equity: $\text{Total Debt} \div \text{Total Equity}$
 - Total Debt/Total Assets: $\text{Total Debt} \div \text{Total Assets}$
- Offeror shall describe all current or past involvement in litigation or legal disputes.

Full points will not be awarded without full disclosure of all required items above.

6.3 Background and Experience

Offeror shall submit a narrative of past performance and references which established

that Offeror has the background and experience to provide the services specified in this RFP. The narrative shall be a maximum of twenty (20) pages not including references. Narratives to be submitted shall be in 12 point Arial font or equivalent.

Offeror shall complete Offeror Form OF-1 Customer References in Exhibit 1.

The State reserves the right to conduct reference checks beyond what was provided as references.

The results of the reference checks will be reflected in the rating for this subcategory. Full points will not be awarded without confirmation of services from at least three (3) listed customers references. Offerors are encouraged to notify customer references in advance.

The State will evaluate the Offeror’s demonstrated record based on customer references. The recency and relevancy of the information, the source of the information, the context and general trends in the Offeror’s performance will be considered. More recent and more relevant performance usually has a greater impact on the confidence assessment than less recent and less relevant performance. The State will perform an independent determination of relevancy of the information provided or obtained. The State is not bound by the Offeror’s opinion of relevancy. The following relevancy criteria apply and will be assigned to each effort identified in the Offeror’s Proposal on background and experience.

BACKGROUND AND EXPERIENCE RELEVANCY RATING	
Rating	Definition
Very Relevant	Present/past performance effort involved the same scope and magnitude of effort and complexities this solicitation requires.
Relevant	Present/past performance effort involved similar scope and magnitude of effort and complexities this solicitation requires.
Somewhat Relevant	Present/past performance effort involved some of the scope and magnitude of effort and complexities this solicitation requires.
Not Relevant	Present/past performance effort involved little or none of the scope and magnitude of effort and complexities this solicitation requires.

BACKGROUND AND EXPERIENCE RECENCY RATING	
Rating	Definition
Very Recent	Completion of a service project within the last three (3) years.
Recent	Completion of a service project within the last five (5) years.
Not Recent	Completion of a service project within the last ten (10) years.

Once the State considers relevancy and recency, a preliminary rating for this subcategory will be determined based on the following table. The preliminary rating will be averaged with the rating for the other subcategories for this criterion.

Rating	Description
5- High Confidence	Based on the offeror's performance record, the State believes the Offeror will successfully perform the required effort.
4- Significant Confidence	Based on the offeror's performance record, the State believes the Offeror will likely successfully perform the required effort.
3- Satisfactory Confidence	Based on the offeror's performance record, the State believes the Offeror could likely successfully perform the required effort.
2- Unknown Confidence	Based on the offeror's performance record, the State believes the offeror will likely not successfully perform the required effort.
1- Little Confidence	Based on the offeror's performance record, the State believes the offeror will not successfully perform the required effort.
0- No Confidence	The offeror has no performance record.

* Given the number of mergers and acquisitions in today's business environment, Offerors may not have existed under their current name for very long. If the key management personnel of an Offeror have relevant experience with an entity of a different name, the State may consider this information in the evaluation process.

Evaluation Criteria 2: Project Organization and Staffing

Project Organization and Staffing will be evaluated and scored to a maximum of 150 points. Offeror shall submit a narrative of a maximum of ten (10) pages explaining its approach. This area includes, but is not limited to, the specific requirements included in Appendix K: Proposed Project Organization and Staffing.

Evaluation Criteria 3: Business Solution – Functional Requirements

Business Solution – Functional Requirements will be evaluated and scored at a maximum of 150 points. Offeror shall submit a narrative of a maximum of twenty (20) pages explaining its approach. This area includes but is not limited to, the specific requirements included in Appendix A-1: Core Phase Requirements, Appendix A-2 Expansion Phase Requirements, and Appendix B: Optional Phase Requirements.

Evaluation Criteria 4: Business Solution – Technical Requirements

The Business Solution – Technical Requirements will be evaluated and scored at a maximum of 150 points. Offeror shall submit a narrative of a maximum of twenty (20) pages explaining its approach. Offerors must demonstrate or provide, at minimum:

- a. Number of key personnel allocated;
- b. The methodology toward implementing and tracking the success of deliverables including milestones;
- c. A clear understanding of the statement of work required for the project, with a work plan that will ensure the achievement of task objectives;
- d. A clear understanding of state laws and regulations and a viable plan for implementing these requirements;
- e. A viable transition plan with contingency planning and established milestones;
- f. An integrated plan that expands outreach to targeted audiences;
- g. An overall effective strategy that accomplishes all project goals as outlined in the Statement of Work;
- h. A risk assessment and risk mitigation plan;
- i. A quality control plan that includes key performance indicators as described in Section 7.4 of the Contract Management section;
- j. The approach to tracking and achieving the required deliverables; and
- k. Demonstration of proposed solution.

This area includes, but is not limited to, all of the specific requirements included in Appendix C: Technical Requirements.

Evaluation Criteria 5: Business Solution – Implementation Services Requirements

Implementation Services Requirements will be evaluated and scored to a maximum of 100 points. Offeror shall submit a narrative of a maximum of twenty (20) pages explaining its approach in these key areas:

- a. Implementation Plans; and
- b. Work Plan and Schedule.

This area includes, but is not limited to, the specific requirements in Appendix D: Implementation Services Requirements.

Evaluation Criteria 6: Business Solution – On Going Services

On Going Services will be evaluated and scored to a maximum of 150 points. Offeror shall submit a narrative of a maximum of twenty (20) pages explaining its approach in these key areas:

- a. Hosting Services;
- b. Maintenance and Operations Services;
- c. Business Process Outsourcing Services;
- d. Project Team Facility Requirements; and
- e. Service Level Agreement Requirements.

This area includes but is not limited to the specific requirements included in Appendix E: Ongoing Services Requirements and Appendix F: Service Level Agreement Requirements.

Evaluation Criteria 7: Price

There are two subfactors to Price evaluation: (1) Total Price; and (2) Price Reasonableness and Realism

Subfactor 1 – Total Price

The Offeror's price Proposal is worth 150 percentage of points; 15% of the total 1000 points. Offerors shall enter prices for each of the five years proposed in Appendix L: Cost Workbook. Prices shall include all applicable federal, state, and local taxes, and all Proposals shall be interpreted by the State as including all applicable federal, state, and local taxes.

Cost Points Conversion

In converting cost to points, the lowest total cost will automatically receive the maximum number of points allocated to cost. The point allocations for cost for each of the other Offers shall be determined as follows: $[\text{Lowest total cost}] \times [\text{maximum number of points possible}] \div [\text{Offeror's proposed cost}] = \text{Number of cost points awarded}$.

Price and Rate Guarantee Period

All prices shall be guaranteed for each year of the contract. Requests for price adjustment shall not be considered.

Subfactor 2 – Price Reasonableness and Realism

Prices shall be evaluated for competitiveness and reasonableness. The State may use any or all price analysis techniques and procedures to determine price reasonableness.

The State may use any or all price realism techniques and procedures for the purpose of measuring an Offeror's understanding of the solicitation requirements or in assessing the risk inherent in an Offeror's Proposal.

Section 7: Contract Management

Contract management refers to post-award type activities such as contract implementation, contract administration, measurement of work completion, and payment computation based on deliverables. Contract management also involves contract monitoring, contract modifications, and dealing with contract issues. Focused attention to contract management considerations facilitates a positive working relationship between the government customer, procurement staff, and the contractor.

7.1 Contract Administrator

The Contract Administrator identified below is the single point of contact (POC) post-award. The Contractor shall direct to the Contract Administrator all questions concerning the post-award process and any other questions that may arise related to the resulting contract. The Contract Administrator is:

Todd Omura
IT Governance Officer
Office of Enterprise Technology Services
1151 Punchbowl Street, Room B10 Honolulu, HI 96813
todd.t.omura@hawaii.gov
Phone: (808) 586-1824

7.2 Contractor/State Meetings

The Contractor shall participate in initial meetings with the State to discuss the Contract, including but not limited to an estimated timeline for transition and implementation, status reports of the transition and implementation, the expectation of deliverables, training sessions, and follow-up meetings.

7.3 Dispute Process and Escalation

Refer to Exhibit 4, Attorney General (AG) General Conditions. Disputes shall be resolved in accordance with section 103D-703, HRS, and Chapter 3-126, HAR.

7.4 Quality Control

The Contractor shall provide quality services and products and management oversight of all processes. The Contractor shall use key performance indicators that are acceptable within the specific market industry to manage and monitor quality performance. The Contractor shall provide accurate data and reports and meet deliverables, with emphasis on the overall success and positive impact on the project. The Contractor shall provide management, support, and qualified personnel to accomplish the objectives of the Contract.

7.5 Key Performance Indicators (KPIs)

RFP Reference	Items	Due Date
Section 1.5 Period of Performance	Length of time to complete the Core Phase	July 1, 2022
Section 1.5 Period of Performance	Length of time to complete the Expansion Phase	July 1, 2023
Section 1.5 Period of Performance	Length of time to complete the Optional Phase	January 1, 2024

7.6 Post Award Deliverables

The Contractor shall provide the following deliverables within six (6) weeks of the effective date of the Contract:

- a. Project Charter
- b. Project Management Plan
- c. Work Break Down Structure
- d. Project Schedule
- e. Scope Change Management Tool
- f. Issue/Risk Management Tool



Exhibit 1: Procedures for Submitting a Proposal

RFP-ERP-2020

1. Procedures for Submitting a Proposal

1.1. Form, Contents, and Other Requirements of a Proposal

Each Proposal shall be in the form set forth in, and meet the requirements of this Exhibit.

1.1.1. Proposals shall be organized in the sections set forth in the attached Offeror Checklist. Offerors shall follow the exact format specified, including the use of all titles, subtitles, and numbering; with bookmarks separating each section. Each section must be labeled, and pages numbered sequentially for the entire Proposal.

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

1.1.3. Proposals shall include an electronically linked table of contents and bookmarks for sections and subsections using Microsoft Office functionality.

1.1.4. Files from an Offeror over 100MB in size shall be split into a series of volumes (not larger in size than 100MB) to ensure trouble-free uploading and downloading. Include the RFP number, Offeror name, and volume number in the file name. Offeror shall also bookmark and provide the table of contents in each volume.

1.1.5 Proposals shall be in 12-point Arial font.

1.1.6 The Proposal must include the Offeror Transmittal Letter (attached) with the exact legal name of the Offeror as registered with the Department of Commerce and Consumer Affairs, the Offeror's business address, and the name, remittance address, as well as email address, telephone and fax number(s) of the Offeror's contact person. The Proposal shall be duly executed and shall include the Offeror's authorized official's signature. Ink signatures are not required for electronic submission of a Proposal but shall be required before a Notice of Award may be issued to the Offeror. The submission of a Proposal shall constitute the Offeror's agreement to be bound by electronic signature.

1.1.7 Offerors are advised that they should not wait until the last minute to submit their Proposal on HIEPRO. Offerors should allow for ample time to review its Proposal, including attachments, prior to the Proposal deadline.

Attachment Offeror Checklist

Offeror must address ALL sections and attachments and provide the information and documentation as required in the table below.

Description	Reference in RFP	Completed
Offeror Transmittal Letter	Attachment to Exhibit 1, Offeror Transmittal Letter	<input type="checkbox"/>
Table of Contents		<input type="checkbox"/>
Evaluation Criteria 1: Client References	Attachment to Exhibit 1, Offeror Form OF-1	<input type="checkbox"/>
A List of Exceptions to Terms	Attachment to Exhibit 1, Offeror Form OF-2	<input type="checkbox"/>
Identification of Confidential Information, if applicable	Attachment to Exhibit 1, Offeror Form OF-3 RFP Document Section 1.23	<input type="checkbox"/>
Evaluation Criteria 1: Offeror Qualifications Offeror Background and Experience	RFP Document Section 6	<input type="checkbox"/>
Evaluation Criteria 1: Offeror Qualifications Financials	RFP Document Section 6	<input type="checkbox"/>
Evaluation Criteria 2: Project Organization and Staffing Staffing Plans	RFP Document Section 6 and Appendix K	<input type="checkbox"/>
Evaluation Criteria 2: Project Organization and Staffing Project Team	RFP Document Section 6 and Appendix K	<input type="checkbox"/>
Evaluation Criteria 2: Project Organization and Staffing Staff Experience and References	RFP Document Section 6 and Appendix K	<input type="checkbox"/>
Evaluation Criteria 3: Business Solution – Functional Requirements Core Phase Requirements	RFP Document Section 6 and Appendix A-1	<input type="checkbox"/>
Evaluation Criteria 3: Business Solution – Functional Requirements Expansion Phase Requirements	RFP Document Section 6 and Appendix A-2	<input type="checkbox"/>
Evaluation Criteria 3: Business Solution – Functional Requirements Optional Phase Requirements	RFP Document Section 6 and Appendix B	<input type="checkbox"/>
Evaluation Criteria 4: Business Solution – Technical Requirements Technical Architecture	RFP Document Section 6 and Appendix C	<input type="checkbox"/>
Evaluation Criteria 4: Business Solution	RFP Document Section 6 and Appendix C	<input type="checkbox"/>

– Technical Requirements Solution Architecture		
Evaluation Criteria 4: Business Solution – Technical Requirements Solution Technology	RFP Document Section 6 and Appendix C	<input type="checkbox"/>
Evaluation Criteria 5: Business Solution – Implementation Requirements Implementation Plans included with offer	RFP Document Section 6 and Appendix D	<input type="checkbox"/>
Evaluation Criteria 5: Business Solution – Implementation Requirements Work Plan and Schedule	RFP Document Section 6 and Appendix D	<input type="checkbox"/>
Evaluation Criteria 6: Business Solution – Ongoing Services Hosting Services	RFP Document Section 6 and Appendix E	<input type="checkbox"/>
Evaluation Criteria 6: Business Solution – Ongoing Services Maintenance and Operations Services	RFP Document Section 6 and Appendix E	<input type="checkbox"/>
Evaluation Criteria 6: Business Solution – Ongoing Services Business Process Outsourcing Services	RFP Document Section 6 and Appendix E	<input type="checkbox"/>
Evaluation Criteria 6: Business Solution – Ongoing Services Project Team Facility Requirements	RFP Document Section 6 and Appendix E	<input type="checkbox"/>
Evaluation Criteria 6: Business Solution – Ongoing Services Service Level Agreement Requirements	RFP Document Section 6 and Appendix F	<input type="checkbox"/>
Evaluation Criteria 7: Price Price Proposal	RFP Document Section 6 and Appendix L	<input type="checkbox"/>
Certification – As Applicable	RFP Document Section 1.21 and 1.22	<input type="checkbox"/>
Offeror Checklist – submittal of this checklist with all items checked “completed.”	Attachment to Exhibit 1, Offeror Checklist	<input type="checkbox"/>

Authorized Offeror Signature

ATTACHMENT
Offeror Transmittal Letter
An Enterprise Financial Solution
RFP-ERP-2020

Todd Omura
Office of Enterprise Technology Services, State of Hawaii
1151 Punchbowl Street, Room B10
Honolulu, Hawaii 96813

Dear Mr. Omura:

The undersigned has carefully read and understands the terms and conditions specified in this RFP and hereby submits the following Proposal. The undersigned further understands and agrees that by submitting this Proposal 1) Offeror is declaring this Proposal is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) Offeror is certifying that the price(s) submitted was (were) independently arrived at without collusion.

Offeror is a:

- Sole Proprietor Partnership *Corporation Joint Venture
 Other _____
*State of incorporation: _____

Hawaii General Excise Tax License I.D. No. _____
Social Security No. or Federal I.D. No. _____

Payment address
(other than street address below): _____
City, State, Zip Code: _____

Business address (street address): _____
City, State, Zip Code: _____

Respectfully submitted:

_____	(x) _____
Date	Authorized (Original/Digital E-Signature) Signature
_____	_____
Telephone No.	Name and Title (Please Type or Print)
_____	_____
Fax No.	** Exact Legal Name of Company (Offeror)
_____	_____
E-mail Address	_____

****If Offeror is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed:**

**ATTACHMENT
CUSTOMER REFERENCES
OFFEROR FORM OF-1**

Customer References: Offeror is required to complete Section 1 with a minimum of three (3) references of customers who received services similar to those requested in this RFP. Offeror, including any proposed sub-contractors included in the Offer, shall complete Section 2a for each reference and email to referenced customer to complete Section 2b.

Section 1. To be completed by the offeror and submitted with proposal.

Customer Name #1: _____
Address: _____
Reference Name: _____
Current Phone: _____

Customer Name #2: _____
Address: _____
Reference Name: _____
Current Phone: _____

Customer Name #3: _____
Address: _____
Reference Name: _____
Current Phone: _____

Customer Name #4: _____
Address: _____
Reference Name: _____
Current Phone: _____

Customer Name #5: _____
Address: _____
Reference Name: _____
Current Phone: _____

The State may contact all of the references listed to inquire about Offeror's equipment, services, performance, and degree of customer satisfaction. Full points for references will not be awarded unless Section 2a and 2b are emailed from referenced customers to the Contract Administrator.

Section 2a. To be completed by the Offeror

Contractor/Offeror Name:	Contractor/Offeror Contact/Name:
Project Dates:	Contractor/Offeror Contact Phone:
Customer Organization:	Customer Contact Name:
	Customer Phone:
Customer Address:	Customer Fax:
Operating Budget of Organization:	
<p>Project included implementation in which of the following procurement categories (Check all that apply):</p> <p><input type="checkbox"/> Acquisition Planning <input type="checkbox"/> Market Research <input type="checkbox"/> Solicitation and Award</p> <p><input type="checkbox"/> Contract Management <input type="checkbox"/> Completion & Closeout <input type="checkbox"/> Other Services</p>	
<p>Project included implementation of procurement categories listed above in a government and/or education organization:</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
Scope of Project:	
Number of employees staffed for this project:	
Total One-Time Cost of Project (Estimated/Actual):	

Reason for Change in Total One-Time Cost of Project, if applicable:			
Scope of Contractor/Offeror's Involvement in this project:			
Number of employees Contractor/Offeror staffed for this project:			
Original Value of Contractor/Offeror's Contract:		Actual Total Contract Value:	
Reason(s) for Change in Value:			
Estimated Start & Completion Dates:		From:	To:
		Click here to enter a date.	Click here to enter a date.
Actual Start & Completion Dates:		From:	To:
		Click here to enter a date.	Click here to enter a date.
Reason(s) for Difference Between Estimated and Actual Dates:			

Section 2b. To be completed by the Customer Reference

Contractor Name:

Customer Organization:

A. Validation of Referenced Project Data Provided by Offeror

Comments from the Customer Organization

B. Past Performance Reference

RATING GUIDELINES

Selection	Rating
5	Significantly exceeded your expectations.
4	Somewhat exceeded your expectations.
3	Met your expectations.
2	Somewhat below your expectations.
1	Significantly below your expectations.

Please explain ratings of 1, 2, or N/A in the Comments section below.

Criteria	Rating	Not Applicable
1. The Contractor provided sufficient project resources with appropriate skill sets to meet all project goals and objectives.	Choose an item.	<input type="checkbox"/>
2. The Contractor effectively managed its project staff to achieve project goals and objectives.	Choose an item.	<input type="checkbox"/>
3. The Contractor met all required tasks and deliverables timely and satisfactorily.	Choose an item.	<input type="checkbox"/>
4. The Contractor provided effective training and knowledge transfer to meet project goals.	Choose an item.	<input type="checkbox"/>
5. The Contractor satisfactorily managed project scope and risk to adhere to project schedule, control costs, and meet project goals.	Choose an item.	<input type="checkbox"/>
6. The Contractor provided effective post-implementation maintenance and operations support.	Choose an item.	<input type="checkbox"/>

Comments:
For Criteria with Ratings of 1, 2 or N/A:
General Comments:

As a representative of the Customer Organization listed above, I approved the responses to the previous statements about the performance of the Contractor listed above on the project identified in Section 2a of this Offeror Experience Reference Form.	
Printed Name:	Printed Title:
Signature:	Date:

**ATTACHMENT
FORM OF-2 – EXCEPTIONS**

RFP-ERP-2020, AN ENTERPRISE FINANCIAL SOLUTION

STATE OF HAWAII, OFFICE OF ENTERPRISE TECHNOLOGY SERVICES (ETS)

Exceptions to the terms, conditions, specifications, or requirements listed in the RFP (not including the General Conditions) shall be indicated below. No exceptions shall be made to Exhibit 4, the General Conditions. OFFEROR shall reference the RFP section where the exception is taken, a description of the exception taken, the proposed alternative, and the reason for the proposed alternative. The State reserves the right to accept or reject any request for exceptions.

**ATTACHMENT
FORM OF-3 – CONFIDENTIAL INFORMATION**

RFP-ERP-2020, AN ENTERPRISE FINANCIAL SOLUTION

STATE OF HAWAII, OFFICE OF ENTERPRISE TECHNOLOGY SERVICES (ETS)

List and provide the basis for any information deemed confidential, protected, or propriety information. Do not include this information in the Proposal. Provide references in the Proposal to this OF-3.



Exhibit 2: Offeror's Library Instructions
RFP-ERP-2020

Offeror's Library Instructions

The Offeror's Library contains documents that describe in detail the State's business processes for accounting and finance and its legacy systems, and the structure of the State's future Uniform Chart of Accounts. These documents are essential in preparing a Proposal, but are confidential as they contain information concerning the financial operations of the State.

In order for an Offeror to access the Offeror's Library, the Offeror must electronically sign and deliver a Non-Disclosure Agreement (NDA) to the State. (See Attachment A). Upon request, the State POC will electronically distribute an NDA to the Offeror's authorized representative which must be signed electronically using the State's eSign service. Upon receipt of the electronically signed NDA, the State shall issue log-in credentials to the Offeror's authorized representative or designated point of contact at the email address provided by the Offeror at the time the NDA is submitted. Offeror must access the Offeror's Library within five (5) business days of receiving the log-in credentials from the State. After the fifth (5th) business day, the State shall revoke Offeror's log-in credentials if no activity by Offeror is observed. If the State revokes Offeror's log-in credentials, the Offeror shall cease to have access to the Offeror's Library. The Offeror may gain access again to the Offeror's Library by resubmitting the electronically signed NDA. No Offeror shall permit any other person or entity or offeror to use its log-in credentials. Any other person, entity, or offeror (including a proposed subcontractor) must submit an electronically signed NDA and receive its own log-in credentials from the State.

ATTACHMENT A

DIRECT ALL QUESTIONS OR ISSUES RELATING TO THE ACCESSIBILITY OF THE NON-DISCLOSURE AGREEMENT, AND REQUESTS FOR ACCOMMODATIONS FOR PERSONS WITH DISABILITIES IN CONNECTION WITH THIS AGREEMENT, TO: TODD OMURA, TELEPHONE (808) 586-1824 OR EMAIL ADDRESS TODD.T.OMURA@HAWAII.GOV

NONDISCLOSURE AGREEMENT

THIS NONDISCLOSURE AGREEMENT (“NDA”) is made and entered into as of _____, 2020 (the “**Effective Date**”) by and between the State of Hawaii (“**State**”), and _____, a _____ organized and existing under the laws of _____, with offices at _____ (“**Offeror**”) (each, a “**Party**” and together, the “**Parties**”).

WITNESSETH:

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

WHEREAS, Offeror is interested in submitting a proposal in response to the RFP;

WHEREAS, the State is willing to disclose to Offeror certain Confidential Information through the **Offeror’s Library** on the terms and conditions of this NDA;

WHEREAS, the State requires Offeror to maintain the Confidential Information in confidence, protect it from unauthorized use and disclosure, and use it only in accordance with the terms of this NDA; and

WHEREAS, Offeror acknowledges that failure of Offeror to maintain the Confidential Information in confidence, protect it from unauthorized use and disclosure, and to use it only in accordance with the terms of this NDA would cause irreparable harm to the State.

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

1. Definitions

1.1 “Affiliates” means any person, including any individual, corporation, subsidiary, affiliate, partnership, association, business, organization or other entity that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a Party and/or such entities. The term “control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of

an individual or entity, whether through the ownership of fifty percent (50%) or more of voting shares (or their equivalent), by contract, or otherwise.

1.2 Confidential Information” means materials and information relating to the State’s information technology systems, State personal identifiable information (“PII”), other material or information labeled or identified as confidential to the State by the State or its professional advisors, or which by its nature is confidential to the State. Confidential Information shall include all copies and reproductions of Confidential Information.

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

2. Use and Disclosure of Confidential Information

2.1 Offeror represents, warrants, and covenants to the State that Offeror and Offeror’s Affiliates, hereinafter collectively “Offeror,” shall use the Confidential Information only for the limited purpose of evaluating the RFP as part of the RFP Process and preparing proposals in response to the RFP in accordance with the provisions of this NDA and the RFP. Offeror further represents, warrants, and covenants that Offeror shall maintain the Confidential Information of the State in complete confidence and secrecy and shall take all steps necessary, including those required by the State, to safeguard and prevent the disclosure of the Confidential Information.

Offeror shall, at a minimum: (a) take measures to protect the Confidential Information that are no less protective than the measures the Offeror uses to protect the confidentiality of and prevent the disclosure of its own confidential and proprietary information; and (b) maintain the Confidential Information in a physically secure location, and in the case of electronic files, in a secure computer system.

Offeror shall be responsible for any breach of this NDA.

2.2 Without limiting any of the other provisions hereof, and subject to the provisions of Sections 2.1 and 2.3, Offeror represents, warrants, and covenants that Offeror shall not permit access or assist others to access directly or indirectly, without the prior express written consent of the State, (a) by electronic means or otherwise (including, without limitation, on or through the Internet), by disclosing, copying, selling, transferring, publishing, distributing, licensing, transmitting, providing access to, making available or

otherwise releasing any part of the Confidential Information to any person or entity other than a person authorized by this NDA to receive the Confidential Information, or (b) knowingly or negligently misappropriate or use the Confidential Information for its own benefit or for the benefit of others, except in conjunction with the RFP Process.

2.3 At any time at the State's request, Offeror shall, return or destroy, as specified by the State, all copies of the Confidential Information. Offeror shall immediately shred, permanently delete or otherwise irretrievably destroy and render unreadable all Confidential Information from all computers, servers, and storage devices and media owned by, or operated by or for, Offeror, except to the extent that through the exercise of reasonable commercial efforts the same cannot be removed from databases or records.

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

2.5 After execution of this NDA by both Parties, the Offeror will receive authentication credentials from the State that will enable the Offeror to access the Offeror's Library, subject to any additional provisions set forth in the RFP and the Offeror's Library.

3. Duration

Offeror shall maintain the Confidential Information in confidence pursuant to the terms of this NDA in perpetuity.

4. General Provisions

4.1 This NDA constitutes the entire and exclusive agreement between the Parties with respect to the Confidential Information and shall not be amended, modified, or changed, nor any right waived, except by an instrument in writing executed by both Parties. This NDA may not be assigned by either Party, in whole or in part, to any third-party without the prior express written consent of the other Party. This NDA is binding upon and shall inure to the benefit of each Party to this NDA, and its respective heirs, executors, administrators, successors, and permitted assigns. All references to Sections are to Sections in this NDA. An original handwritten signature transmitted by facsimile or by email shall be considered a handwritten signature for purposes of this NDA. Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply. The headings used herein are for reference only and shall not constitute part of this NDA or in any way affect its meaning or interpretation.

4.2 Confidential Information disclosed pursuant to this NDA is provided on an “as is” basis. The State makes no warranties of any kind with respect to the Confidential Information, and disclaims all warranties, whether implied or statutory or arising out of custom or course of dealing or usage or in the trade, including without limitation warranties of merchantability or fitness for a particular purpose. The State shall not be liable for any consequential, punitive, incidental, exemplary, or special damages arising out of activities related to this NDA.

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

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

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

4.6 If the State is the prevailing Party in any civil or administrative action, or proceeding for relief, breach of, or to enforce, this NDA, the State shall be entitled to recover from Offeror all of the State’s attorneys’ fees (including without limitation allocated costs of State attorneys), costs, expenses, fees and disbursements, and the fees and expenses for expert witnesses and expert opinions, incurred before and during such action or proceeding for relief.

4.7 This Agreement shall be governed by and construed in accordance with the laws of the State of Hawaii, without giving effect to conflicts of laws principles. Each Party hereby submits to the jurisdiction of the state and federal courts located in the City and

County of Honolulu, for any action or proceeding relating to this NDA, and expressly waives any objection it may have to such jurisdiction or the convenience of such forum. Service of process at a Party's place of business or place of residence (in the case of natural persons) specified below, shall be sufficient to establish the Hawaii court's jurisdiction, provided that service of process for any Party outside of the State of Hawaii shall be by certified mail.

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

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

STATE OF HAWAII

Offeror

By:

By:

Print
Name: _____

Print
Name: _____

Print
Title: _____

Print
Title: _____

ADDRESS:

ADDRESS:

Attn: _____
Title: _____
Fax: _____

Attn: _____
Title: _____
Fax: _____



Exhibit 3: Relationship Management

RFP-ERP-2020

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1. Relationship Management Overview

This Exhibit 3, Relationship Management, sets forth the roles and responsibilities of the parties for the relationship processes and activities provided under the Contract as part of the EFS Services. These processes and activities are required to provide and support the overall relationship between the State of Hawaii (State) and the Contractor.

1.1 Relationship Management

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

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

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

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

2. Key Roles

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

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

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

2.1 Executive Sponsors

The State shall designate an Executive Sponsor and Contractor shall designate a Contractor Senior Executive; each shall be responsible for the overall success of the Contract and be the primary executive point of contact for all matters relating to the Contract.

The Contractor Senior Executive shall be at a minimum:

- (a) Knowledgeable about the Contract requirements, the State EFS Program, and the Contractor, subcontractor, and third-party services and how all of these integrate to provide the Contract requirements for the State;
- (b) Responsible for approving changes to scope, schedule, and costs of the EFS Program;
- (c) The primary relationship manager between the Contractor and the State;
- (d) Responsible for ensuring services are delivered consistently and seamlessly across all service areas and State organizations;
- (e) Experienced at providing services equal in size and scope to those of the State; and

- (f) Otherwise acceptable to the State.

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

2.2 Program Managers

The State shall designate an Enterprise Resource Planning (ERP) Program Manager and Contractor shall designate a Contractor Program Manager; each shall be the primary point of contact for all day-to-day matters relating to the Contract.

The Contractor Program Manager shall be at a minimum:

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

2.3 Additional Relationship Management Functions

The State and Contractor shall each identify a Contract Administrator specifically for:

- (a) Performance Management; and
- (b) Contract Management.

2.3.1 Performance Management

The Performance Management function takes overall responsibility for ensuring that Contractor performance meets business requirements. This function includes:

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

2.3.2 Contract Management

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

- (a) Leading and facilitating contract activities from the point that the contract is signed through Contractor transition and ongoing operations;
- (b) Monitoring and coordinating the approval activities specifically tied to contracted deliverables, invoicing, and payments;
- (c) Monitoring compliance with contract terms and conditions and providing recommendations to resolve issues related to noncompliance;
- (d) Creating, negotiating, and incorporating amendments into the Contract in accordance with the terms and conditions of the Contract, if needed; and
- (e) Coordinating the contract negotiations and renegotiations to accommodate changes, if needed.

3 Governance Process

3.1 Governance Structure

The Executive Team, Governance Committee, and Project Management Office described below shall be responsible for administration of the governance processes. The State shall comprise the majority of members for each of the committees, teams, and groups described below.

3.1.1 Executive Team

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

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

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

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

3.1.2 Governance Committee

The Governance Committee shall provide input and advice concerning the overall business and technology relationship between the parties, including the effectiveness and value of the services provided by Contractor and guidance to improve such effectiveness and value.

The Governance Committee shall be chaired by State's Executive Sponsor. Its members shall include executives from the various jurisdictions or their designees, the Contractor Program Manager, and Contract Administrator; and from the State shall include the Chief Information Officer, Project Sponsor, Program Manager, and Contract Administrator. The Governance Committee membership should be between 6-8 people with balanced representation from each party.

The Governance Committee shall meet in person at State facilities on a monthly basis at a minimum or more often if required by the State (i.e., weekly). Responsibilities shall include the following:

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

Prior to each meeting, Contractor shall prepare a suggested agenda with active input, review, and approval from the State's Executive Sponsor. Contractor shall deliver the agreed-upon agenda to the State

at least five (5) business days prior to the meeting, if such meetings take place on a monthly basis. Contractor shall make available its senior management personnel to answer questions from the State's senior management personnel regarding the agenda items. Either party may invite industry subject matter experts to participate in the meetings to facilitate information exchange and increase the value of the strategies discussed.

3.1.3 Project Management Office

The Project Management Office, comprised of program and project management from the State, including a State Project Manager, and a Contractor Project Manager, shall oversee the overall operation of the Contract including the integration of the individual services provided by Contractor or third parties to service the EFS Program, reviewing Contractor performance, and addressing tactical issues. Issues that cannot be resolved by the Project Management Office shall be escalated to the EFS Governance Committee.

The Project Management Office shall be chaired by a state Program Manager ("State Program Manager"). State members shall include the State Project Manager, business process owners, and functional and technical leads. Contractor members shall include the Contractor Program Manager and functional and technical leads. Any additional temporary Contractor attendees must be approved by the State in advance of the meeting.

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

- (a) Reviewing the State's satisfaction with the Contractor key personnel;
- (b) Reviewing project forecasts and action items;
- (c) Addressing operational and service delivery issues arising during the previous week;
- (d) Reviewing root cause analysis of any previous issues;
- (e) Discussing Contractor's compliance with the SLAs for the services;
- (f) Reviewing problems, disputes, incidents, and requests for changes;
- (g) Reviewing all financial arrangements, including invoices submitted by Contractor;

- (h) Addressing problems, disputes, incidents, and requests for changes that have been escalated to this level;
- (i) Planning for the future; and
- (j) Addressing other matters raised by either party.

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

3.2 Day-to-Day Management Processes

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

3.3 State-Contractor Communications

Communications between the State and Contractor shall wherever possible, practicable and safe be in person. Video or audio conferences via Microsoft Teams or similar mutually agreed-upon application will be the second choice of communication medium. Where video or audio conferences are not practical, email will be the alternative communication medium.

All formal meetings whether in person or video or audio conferences shall be documented in the project's official record.

3.4 Governance Processes

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

- (a) Strategy and Planning;

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

4 State and Contractor Governance Functions

Table 1 identifies roles and responsibilities associated with the key governance processes that the State and Contractor shall address. Nothing in Table 1 should be construed to limit the responsibilities of the parties.

Key: “R” = Responsible, “A” = Accountable, “C” = Consulted, “I” = Informed

Table 1. Governance Functions and Responsibilities

	Contractor	State
Strategy and Planning	Contractor	State
1. Chair semi-annual Executive Team meetings.	C	A
2. Provide support and commitment of State executives to participate in semiannual Executive Team meetings.	C	A
3. Provide support and commitment of Contractor executives to participate in semi-annual Executive Team meetings.	A	C
4. Provide the Contractor with the State strategic business and technology imperatives that require Contractor support.	C	A
5. Provide input and recommendations in connection with the development of the State strategic business plans, as requested by the State.	A	C
6. Provide technical solutions, expertise, and advisory services that are appropriately aligned with the State’s needs and business focus.	A	C
Contract Management	Contractor	State
7. Monitor contract terms and management processes.	R	A
8. Monitor and revise contracts as applicable and review recommended contract modifications.	C	A
9. Provide change requests and justification, as applicable.	A	R
10. Provide change request impact analysis, level of effort, and cost estimation, as applicable.	R	C
11. Provide change orders, work order authorizations and termination assistance requests, as applicable.	I	R
12. Implement change orders, work orders and termination assistance.	A	C

Relationship Management	Contractor	State
13. Provide support and commitment of the State executives to the relationship.	C	R
14. Provide support and commitment of the Contractor executives to the relationship.	R	C
15. Manage internal dispute escalation and resolution on behalf of the Contractor.	R	C
16. Manage internal dispute escalation and resolution on behalf of the State.	C	R
Financial Management	Contractor	State
17. Monitor and manage State financial administration practices and procedures associated with the Contract.	R	A
18. Monitor and manage Contractor financial administration practices and procedures associated with the Contract.	A	R
19. Provide invoices in accordance with the Payment Schedule and State invoice requirements.	A	C
20. Identify billing disparities and work with Contractor to identify corrective actions.	C	A
21. Implement corrective actions.	A	R
22. Maintain an audit trail and records of all costs incurred under the Contract.	A	R
23. Proactively ensure that all unnecessary costs are eliminated, and that costs are managed in an efficient manner.	A	R
24. Approve all cost controls.	R	A
Performance Management	Contractor	State
25. Manage and coordinate all delivery aspects of the Contract.	A	C
26. Provide periodic written performance management reports to the State on SLAs and conduct periodic scheduled and ad hoc review meetings as required.	A	C
27. Ensure the Contractor understanding of and adherence to SLAs and any implementations of required changes to achieve such SLAs.	A	R
28. Ensure the Contractor performance meets business and all other contract requirements.	A	R
29. Conduct a formal review and report on root causes of service delivery or other relationship related matters.	R	C
Resource Management	Contractor	State
30. Ensure that staffing, technology and skill levels are adequate to achieve contract objectives.	A	C
31. Inform the State of any potential Contractor Key Personnel staffing changes and of any new personnel assignments planned for new projects.	A	C
32. Review and authorize the Contractor Key Personnel changes to the Program.	R	A
33. Hire and manage subcontractors for delivery of services, if applicable.	R	C
End of Table		

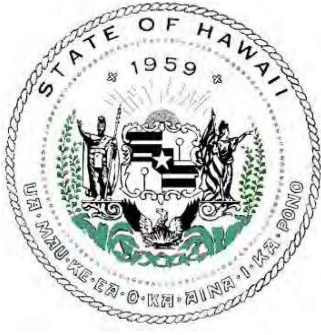


Exhibit 4: Attorney General (AG) General Conditions

RFP-ERP-2020

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

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

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

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

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
 - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
- (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

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

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

- d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:

- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;

- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or

- (C) Within such further time as may be allowed by the Agency procurement officer in writing.

- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
 - (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
 - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
 - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
 - g. Head of the purchasing agency approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.
 - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
 - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
 - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

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

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

31. Records Retention.

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

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

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

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

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

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

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

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

e. Records Retention.

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



Exhibit 5: Selected Supplemental General Conditions

RFP-ERP-2020

Selected Supplemental General Conditions

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

* * *

1. Supplemental General Conditions Definitions.

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

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

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

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

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

1.6 "Availability" means the time that the EFS, in whole and in part, is Operational, as measured 24 hours a day, Monday through Sunday, on a

monthly basis. Availability shall be as described in Appendix F, except for mutually agreed upon scheduled Maintenance activities.

1.7 “Business Continuity Plan” has the meaning ascribed thereto in Section 15.1.

1.8 “Business Day” means any Day that is not a Saturday, Sunday or public holiday in the State.

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

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

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

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

1.13 “Contractor” means the contractor that enters into a contract with the State pursuant to this RFP.

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

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

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

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

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

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

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

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

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

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

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

1.25 “Deliverable” means Contractor’s products which are produced or prepared for the State during the course of Contractor’s performance under this Contract, including all deliverables set forth in “Appendix D, Implementation Services Requirements” and “Appendix E, Ongoing Services Requirements” or in accordance herewith, including each Phase and the EFS, Enhancements, work produced under the Work Plan and Change Orders including but not limited to Custom Software, and Reports, as well as all designs, structures, and models developed in the course of rendering the Services and incorporated into such Deliverables.

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

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

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

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

1.30 “DR” means disaster recovery.

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

1.32 “EFS” means the EFS System and the related implementation methodology together with the EFS Services and all other Services required to provide the foregoing.

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

1.34 “EFS Service Modifications” means the modifications to and Updates and Projects with respect to the EFS Services.

1.35 “EFS Services” means the Services set forth in “Appendix D Implementation Services Requirements” and “Appendix E, Ongoing Services Requirements” including as defined in the RFP Document.

1.36 “EFS Software” means the enterprise planning Software used to provide the EFS.

1.37 “EFS System” has the meaning ascribed thereto in the RFP Document and the Technology, Equipment and Software, including modifications, configured so as to provide the EFS.

1.38 “Escrow Agent” means the independent Third-Party that has been appointed pursuant to the Escrow Agreement to hold a copy of the Source Materials in accordance with the terms and conditions of the Escrow Agreement.

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

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

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

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

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

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

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

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

- 1.47 “Government Records” has the meaning ascribed thereto in Section 12.1.
- 1.48 “HAR” means Hawaii Administrative Rules.
- 1.49 “HRS” means Hawaii Revised Statutes.
- 1.50 “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, and HITECH, as the same has been and/or may be amended from time to time, including, but not limited to, the security standards thereunder.
- 1.51 “Hosting Services” has the meaning ascribed thereto in the RFP Document and other related Services.
- 1.52 “Implementation Services” means the Implementation Services that Contractor is required to provide pursuant to the terms hereof, including those defined in “Appendix D, Implementation Services.”
- 1.53 “Incident” means an issue, incident and/or failure to meet a Service requirement, and as further set forth in “Appendix F, Service Level Agreement Requirements.”
- 1.54 “Intellectual Property Rights” means (a) all rights under all copyright Laws of the United States and all other countries for the full terms thereof (and all rights accruing by virtue of copyright treaties and conventions), including all renewals, extensions, reversions or restorations of copyrights now or hereafter provided by Law and all rights to make derivative works and to make applications for and obtain copyright registrations therefor and recordings thereof; (b) all rights to and under new and useful inventions, discoveries, designs, technology and art and all other patentable subject matter, including all improvements thereof and all know-how related thereto under the Laws in any jurisdiction, and all applications for and the right to make applications for Letters Patent in the United States and all other countries, all Letters Patent that issue therefrom and all reissues, extensions, renewals, divisional applications and continuations (including continuations-in-part) thereof, for the full term thereof; (c) all trade secrets under the Laws of any jurisdiction; (d) all know-how under the Laws of any jurisdiction; (e) all trademarks, service marks and trade names under the Laws of any jurisdiction; (f) all Internet domain names, domain registrations and the similar rights arising under Laws of or recognized in any jurisdiction; and (g) all other intellectual and industrial property and proprietary rights throughout the world not otherwise included in the foregoing, including all techniques, methodologies and concepts and trade dress.
- 1.55 “Key Personnel” means Contractor Personnel whose names and resumes were submitted in the Offer, and/or such other Contractor Personnel otherwise agreed upon by the Parties in writing.

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

1.57 "Letter of Credit" means a letter of credit securing Contractor's performance of its Contract obligations and other potential liabilities to State from the Effective Date during the term, as described in this Exhibit.

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

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

1.60 "M&O" means Maintenance and Operations.

1.61 "NDA" means the Nondisclosure Agreement by and between the Parties.

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

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

1.64 “Ongoing Services” means the Services defined in “Appendix E, Ongoing Services Requirements.”

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

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

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

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

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

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

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

1.72 “Purchased Equipment” means all infrastructure, computer and telecommunications hardware, peripherals and related equipment, furniture, and other equipment (other than Software) that the State is required to purchase, license or use in accordance with the provisions of the Offer.

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

1.74 “RFP” means the Request For Proposals issued by the State.

1.75 “RFP Document” means the RFP exclusive of the Exhibits and the Appendices.

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

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

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

1.79 “Software License” means a worldwide, non-exclusive, royalty-free, fully-paid up, perpetual (or the longest period permitted by Law), irrevocable license and right (with the right to sublicense, except as may otherwise be agreed or limited by the Parties) under all of the licensor’s Intellectual Property Rights (and in the case of software to be licensed or sublicensed by or on behalf of a

Contractor Assisting Entity under all of the Contractor Assisting Entity's Intellectual Property Rights) to use, including Use, Software, other Contractor Technology, and other Pre-Existing Works subject to this Contract.

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

1.81 "Source Code Form" means the software in fully commented Source Code form together with all design, functional, procedural, technical and other specifications and documentation therefor, test scripts, test data, diagnostic tools, root-cause analysis reports for software operational difficulties, and any libraries, file structures and other information and materials necessary for a reasonably skilled programmer to perform a successful compilation into executable form.

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

1.83 "SOW" means a Statement of Work.

1.84 "SPO" means the State Procurement Office.

1.85 "State" means the State of Hawaii, United States of America (and includes the departments within the Executive Branch and all governmental bodies administratively attached to it, including the Department of Education and the University of Hawaii, and related jurisdictions, i.e., the Judiciary, the

Legislature, the Hawaii Health Systems Corporation, and the Office of Hawaiian Affairs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.101 “Work Plan” means the overall plan of activities for the delivery of Services and Deliverables, and the delineation of tasks, activities and events to

be performed and Deliverables to be produced with regard thereto, as provided in accordance with this Contract.

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

2. Order of Precedence and Licenses.

2.1 Precedence. In the event of a conflict between or among any provisions of the Selected Supplemental General Conditions and the General Conditions, the provision which provides the State with greater rights or greater protections, as determined by State in its sole determination in each case, shall control.

2.2 Contractor Technology, Third-Party Software, and Pre-Existing Works License. Except for Third-Party Software, including COTS Software, that is directly licensed to the State by a Third-Party, Contractor hereby does grant State a Software License to the Contractor Technology, Third-Party Software and Pre-Existing Works, including the Source Code Form thereof, and shall cause others to do the same to the extent required by the State, as necessary for State's use, including Use, thereof. As between State and Contractor, the Contractor Technology that is not developed for State pursuant to the terms hereof, will be deemed exclusively owned and/or licensed (under the Software License pursuant to the terms of this Section) by Contractor, including any improvements, Updates and/or Enhancements not developed for State pursuant to the terms hereof. For the avoidance of doubt, the foregoing Software License shall survive the termination or expiration of this Contract (or any part thereof) for any reason, and no consideration shall be required to be paid by State for the Software License after such termination or expiration. State has the right to

assign and sublicense its Software License, or any part thereof as it deems necessary to use, including Use, the EFS, in whole or in part, and other Deliverables and Services. For further avoidance of doubt, the Software License granted in this Section includes all versions of, and improvements, Updates and Enhancements to, the Contractor Technology used in connection with, or as a part of, the EFS.

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

2.4 Documentation. Unless otherwise provided in the RFP Appendices or another Annex hereto or thereto, and subject to the same, Contractor shall provide two (2) sets of Documentation to the State for use in electronic format compatible with Microsoft Corporation's then-generally available Office products and in written format in accordance with the terms of the Contract. Upgrades and revisions to this Documentation shall be provided by Contractor for as long as Contractor is providing Services under the Contract. There shall be no additional charge for the Documentation or updates thereto, in whatever form provided. Contractor's Documentation shall be comprehensive, well-structured, and indexed for easy reference. If Contractor maintains its technical, maintenance and installation Documentation on an intranet or the Internet or other web-based service, Contractor may fulfill the obligations set forth in this Section by providing the State access to its web-based Documentation information, which obligation shall survive the termination of this Contract for as long as Contractor generally provides such access to its other customers. Contractor may also provide such information on CD-ROM or DVD. Except for Third-Party Software Documentation, including COTS Software Documentation, directly licensed to the State by a Third-Party in accordance with the terms hereof, Contractor agrees to and hereby does grant State a worldwide, perpetual (or the longest period permitted by Law in the applicable jurisdiction), irrevocable, royalty-free, fully paid-up, license under all of Contractor's and Contractor's Assisting Entities' Intellectual Property Rights to use, including Use, the Documentation, and authorize others to do the same, as necessary for State's Use, including use, receipt and/or support of the Services. As between

State and Contractor, the Documentation, other than with respect to Custom Software, or as otherwise assigned to State hereunder, will be deemed exclusively owned and/or licensed by Contractor, including any improvements, updates and/or enhancements thereto that do not constitute Enhancements that are not owned by the State. For the avoidance of doubt, the foregoing license shall survive the termination of this Contract (or any part thereof) for any reason, and no consideration shall be required to be paid by State for the license after such termination. State has the right to assign and sublicense its license, or any part thereof as it deems necessary to use, including Use, the Documentation. For further avoidance of doubt, the license includes all versions of, and improvements to, the Documentation used in connection with, or as a part of, the Services.

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

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

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

Parties further agree that, in the event of the commencement of bankruptcy proceedings by or against Contractor, a Contractor Assisting Entity, or the licensor thereof, under the Code, State shall be entitled to retain all of its rights under this Contract.

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

3. Custom Software.

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

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

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

4. Ownership Rights.

4.1 State Ownership. State shall own all worldwide right, title and interest, including all Intellectual Property Rights in and related thereto, in: (a) the Custom Software (unless otherwise agreed to in writing by the Parties in an

amendment to the contract) (including, for the avoidance of doubt, the Source Code thereof) and Documentation therefor, the Custom Software specifications and RFP Requirements to the extent not included in the foregoing, and all EFS Service Modifications, Updates and Enhancements (including with respect to all of the foregoing, the Source Code thereof) thereto and the Documentation therefor; (b) all Work Product and Deliverables, and, in the event that Software is the subject thereof, the Source Code thereof and the Documentation and the specifications and RFP Requirements (however designated) therefor; and (c) all other Work Product and Deliverables created hereunder, whether or not, with respect to each of subsections (a), (b) and (c), created by Contractor and/or any Contractor Assisting Entity or by Contractor and/or a Contractor Assisting Entity in combination with another person or entity (including State) (collectively, "State Property").

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

Deliverables, or portion thereof, or the Intellectual Property Right, which is the subject thereof.

Contractor hereby, without reservation, binds Contractor and the Contractor Assisting Entities and its and their employees, contractors, subcontractors, agents, successors, assigns and legal representatives to cooperate fully and promptly with State and to do all acts necessary or required to be done or requested by State to perfect the assignment to State, including, in and in connection with all proceedings before the U.S. Copyright Office, the U.S. Patent and Trademark Office and similar intellectual property governmental offices or agencies in other jurisdictions, without the necessity of further consideration from State, but at State's reasonable expense, subject to availability of funds. Contractor shall also, from time to time, execute and deliver (and/or cause to be delivered) to State any and all lawful recordation and application documents, including petitions, specifications, oaths, assignments, disclaimers, waivers and lawful affidavits in form and substance as may be requested by State. Contractor shall further provide State from time to time with all other assistance required to vest or perfect State's exclusive ownership of the State Property, and cooperate with State and do all acts requested by State to evidence, establish, apply for, procure, register, record, maintain, enforce and defend State's rights in the same

on a prompt basis, but in any event within such time period(s) as required to enable State to timely preserve or assert its rights in any country or region of the world. Contractor hereby appoints State as its agent and attorney-in-fact to act for and on Contractor's behalf in connection with the foregoing, which appointment is irrevocable and coupled with an interest. Contractor also agrees not to file any applications in any jurisdiction for any Intellectual Property Rights in or with respect to the State Property and/or any components thereof, or to contest or challenge or assist others in contesting or challenging State's ownership of or State's Intellectual Property Rights in the State Property. Contractor hereby expressly waives any "moral rights" or rights of "*droit moral*," if any, that Contractor may have in the subject matter of the assignment. Without limiting the foregoing provisions of this Section 4.2, Contractor agrees to comply with all requests from State related to securing, protecting, enforcing and defending State's rights in the State Property, State confidential information, State Information and any Intellectual Property Rights owned by State, including executing additional documents and/or instruments as requested by State or its attorneys or agents. Without limiting the other provisions of the Contract, Contractor shall not, and shall not permit any other Third-Party to, without the specific prior written approval of State in each instance, (a) create any Derivative Works of or (b) decompile, disassemble or reverse engineer any State Property or any State confidential information, State Information or any other property or Intellectual Property Rights of State. Subject to the terms hereof, the State shall also own and retain all right, title and interest in and to its confidential information, the State Information, the State's Intellectual Property Rights, the Purchased Equipment and Technology, licenses to the State Third-Party Software, and any other State property developed independently by the State or a Third-Party other than Pre-Existing Works.

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

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

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

State, or by electronic transfer and in the form and manner requested by the State from time to time.

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

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

5. Contractor Personnel.

5.1 General Requirements. Contractor shall provide the EFS using Contractor Personnel in accordance with the provisions hereof, and including, for convenience of reference, "Appendix K, Proposed Project Organization and Staffing" and the State Attorney General (AG) General Conditions.

5.2 Background Checks. As set forth in the RFP Appendices and/or requested by the State, and subject to the foregoing, before any Contractor Personnel begin performing any service, including Services, on behalf of State, Contractor shall conduct a background check for such Contractor Personnel (a) covering each such individual's criminal and arrest record, employment history and education background, and (b) Contractor shall conduct (or caused to be conducted) a drug screening of each such Contractor Personnel. Contractor shall not permit any Contractor Personnel who does not pass the background check and drug screening in accordance with standards specified by State from time to time or required by Law to perform any part of the Services or have access to any State facility or information. State reserves the right to audit the records of such background checks from time to time. To the extent that State determines that a background check is inadequate for any Contractor Personnel, (x) Contractor shall perform a new or supplemental background check in accordance with the requirements of State, and (y) to the extent that State directs, Contractor shall not permit such Contractor Personnel to perform or support the Services until such time as State may so permit. Further, for all Contractor Personnel who will have access to State Information, the background check shall include a seven-year criminal investigation at the local and federal

levels, Social Security Number verification, National Criminal Record Locator search, and Global Watch Alert (a check of numerous government watch lists that include individuals, organizations, and companies that have been placed on watch status by the United States Government, European Union, United Nations Security Council, World Bank or foreign governments) in each applicable country.

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

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

5.5 Changes in Contractor Key Personnel. Subject to the RFP Appendices, Contractor will not remove any of the Key Personnel other than by legally required leave of absence, death, discharge, discipline, or resignation of the affected individual without prior written approval of the State, provided, however, that, notwithstanding the foregoing, Contractor shall immediately, and without the necessity of prior advance notice to or written approval from the State, discharge or remove from the performance or support of Services any one of the Key Personnel who Contractor knows or suspects has disclosed or may be likely to disclose State Information without authorization. The successor employee proposed by Contractor for any Key Personnel position is subject to the State's prior written approval. Contractor shall provide the State with detailed information concerning the qualifications, experience, and expertise of the proposed successor together with any additional information requested by the State. The State shall have the right to interview the proposed successor. The

State shall have right to require the removal of any Contractor and Contractor Assisting Entity personnel. Contractor shall provide not less than thirty (30) days' advance notice before removing any Key Personnel for any permitted reason hereunder, other than for legally required leave of absence, death, discharge, discipline or resignation of the affected individual. In the case of any Key Personnel removed for legally required leave of absence, death, discharge, discipline or resignation, Contractor shall expeditiously propose a successor. If the State requests, Contractor shall appoint a qualified employee (subject to prior approval of the State except where time is of the essence) to serve in an interim capacity pending the State's approval of the proposed successor. In the event of any conflict between this Section 5.5 and an Appendix, this Section 5.5 shall control.

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

6. Services and Deliverables.

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

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

6.3 Cooperation With Other State Providers. As part of the Services, Contractor shall cooperate with all other State contractors and all other Third Parties (including for purposes of this Section 6.3 Contractor Assisting Entities providing services to the State other than as a Contractor Assisting Entity) providing products, services, support and/or assistance to the State which are

used in connection with, or interact with, the Services and EFS and provide timely assistance, as required by State, and other State contractors and such Third Parties in order for Contractor, and other State contractors and such parties to provide services to and discharge their obligations to State and such other State contractors and Third Parties on an integrated basis.

7. Representations, Warranties and Covenants.

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

- (a) it is duly organized and validly existing and in good standing under the Laws of the jurisdiction of its incorporation or formation;
- (b) it has full corporate power and authority to execute and deliver the Contract and perform its obligations hereunder and to grant the rights granted and intended to be granted hereunder;
- (c) the Contract constitutes a valid and binding agreement enforceable against it in accordance with its terms (except as such enforcement may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, or similar Laws related to or limiting creditors' rights generally or general principles of equity);
- (d) the execution and delivery of all other instruments and documents required to be executed pursuant hereto, and pursuant to the Contract and the consummation of the transactions contemplated hereby, and thereby do not and shall not (i) conflict with or result in a breach of any provision of its organizational documents, (ii) result in a breach of any agreement to which it is a party, or (iii) violate any Law;
- (e) it will maintain and not obscure the Intellectual Property Rights and proprietary rights, notices and legends of the State on or embodied in the State's Software, Technology and other materials, whether in print, electronic or other form;
- (f) it has the full and absolute right to provide the Services to State contemplated hereunder;
- (g) Contractor is the owner of the Contractor Technology, Third-Party Software and other Pre-Existing Materials licensed hereunder or otherwise has the right to grant, or shall have the full power and authority to grant to the State the rights and licenses described or set forth in the Contract and this Exhibit 6 without violating any rights of any Third-Party and that to the best of Contractor's knowledge there is no actual or

threatened rightful suit by any such Third-Party based on an alleged violation of such rights by Contractor;

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

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

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

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

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

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

systems integration, maintenance, support and operations which is consistent with industry standards applicable to the performance of such Services and that Contractor shall promptly and in accordance with Appendix F re-perform Services which are not in compliance with the foregoing warranty at no cost to the State;

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

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

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

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

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

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

(t) in accordance with the terms of the Contract, Contractor will continue to provide the Services and Deliverables specified hereunder during the pendency of a Good Faith Dispute or any other dispute in connection with the Contract, including Services and Deliverables which are the subject of such Good Faith Dispute or dispute, in the same manner and at the same SLAs and other level(s) of service required under the Contract in accordance with the terms hereof;

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

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

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

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

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

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

(aa) the EFS, Implementation Services, and Ongoing Services, including, for convenience of reference, as set forth in "Appendix D,

Implementation Services Requirements” and “Appendix E, Ongoing Services Requirements,” will comply with the SLAs, including, for convenience of reference, as set forth in “Appendix F, Service Level Agreement Requirements” and “Appendix E, Ongoing Service Requirements;”

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

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

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

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

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

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

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

7.2 Disabling Code. Contractor represents, warrants and covenants to State that, without the prior written consent of State, Contractor shall not insert into any Software any code that is intended to disable or otherwise shut down all or any portion of the Software, other Deliverables, or Services. Contractor further covenants that, with respect to any disabling code that may be part of the Software, Contractor shall not invoke or cause to be invoked such disabling code at any time, including upon expiration or any termination of the Contract. Contractor also covenants that it shall not use Software containing disabling code

without the prior written approval of State. For purposes of this Section, code that serves the function of ensuring software license compliance (including passwords) shall not be deemed disabling code, provided that Contractor will learn from Third Parties whether such code is included in Third-Party software and shall notify State accordingly and obtain State's approval prior to installing such code in any Software or using it as part of the Services.

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

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

7.5 Deliverables. Notwithstanding any provision in the Contract, Contractor represents, warrants and covenants to the State, as an essential part of the Contract that during the Deliverable Warranty Period, each Deliverable, including the EFS and Hosting Services, in whole and in part, shall conform to and perform in accordance with its applicable specifications and RFP Requirements. Contractor shall promptly and in accordance with Appendix F repair or replace each of the Deliverables that does not meet its specifications and RFP Requirements during the Deliverable Warranty Period (which begins upon Go-Live of EFS, in whole or in part, and Acceptance of each other Deliverable in accordance with the terms of the Contract and continues for one (1) year (the "Deliverable Warranty Period")) at no charge to the State. If a Deliverable

includes any products provided by a Third-Party, such as equipment or Third-Party Software or other software or Technology, Contractor shall fully cooperate with and coordinate the work with such Third-Party and the State to promptly and in accordance with Appendix F repair and replace the Deliverables at no charge to the State during the Deliverable Warranty Period. Contractor also warrants that it has and shall have the capability and capacity to produce the Deliverables it has agreed to provide to the State and that it shall procure those Software licenses necessary to provide the Deliverables to the State hereunder and under the Contract. If additional Software licenses or Deliverables, including but not limited to Enhancements, are needed to the Third-Party Software specified in the accepted Offer for Contractor to meet this representation, warranty and covenant, Contractor shall provide such Software licenses and Deliverables at no additional Cost to the State.

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

7.7 Legal and Regulatory Compliance. Contractor represents that, at the time of implementation, the EFS, in whole and in part, shall comply with all applicable State Laws as interpreted in writing by State in the RFP Requirements for Contractor to implement and with all federal Laws. Contractor also warrants that, during the term, the EFS, in whole and in part, shall comply with State Laws as interpreted and provided in writing by State in the RFP Requirements and with all applicable federal Laws, subject to Change Orders that describe: (a) changes that shall be made to the EFS after its implementation to comply with such representation and warranty at no additional charge for federal changes and at amounts in the Change Order to design, develop and implement State changes; and (b) a plan for the Implementation Services to design, develop and implement such changes. Each such Change Order shall describe how the parties will design, develop and implement each such change to meet federal and/or State mandated schedules unless an Implementation will negatively impact the State or is infeasible, in which case the parties will negotiate in good faith a Change Order to address the implementation and schedule. The Change Order shall also describe a good faith Implementation process to protect the State's business

operations. After Acceptance of Deliverables that include Software to comply with changes to applicable federal and State Laws as described above, including the EFS, Contractor shall correct failures to comply with those changes to applicable federal Laws and State Laws as interpreted and provided in writing by State at no charge or as otherwise described in the applicable Change Order, and annual Charges for Maintenance Services for Software resulting from changes to State Laws shall be limited to 10% of the Charges to design, develop and implement such changes, as described in the applicable Change Order.

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

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

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

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

8. Indemnification.

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

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

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

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

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

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

(f) of a breach of any covenant or other obligation pursuant hereto or the Contract by Contractor, a Contractor Assisting Entity, or any party performing or

assisting in the performance of the Services or provision of the Deliverables and/or any Work Product;

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

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

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

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

relevant State Indemnified Person from all liability arising out of such commenced or threatened action; and (b) does not include a statement as to, or an admission of fault, culpability or failure to act by or on behalf of, the State or otherwise adversely affect the State.

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

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

10. Software Escrow.

10.1 Contractor shall provide the State with the Source Code Form of all Software and associated Source Materials for all Software licensed for Use by the State from Contractor or used by Contractor to provide the EFS including any Third-Party Software, if Contractor and/or its Contracting Assisting Entities make such Software available directly to State, and for the Custom Software. Contractor shall provide such Source Code and Source Materials at no

additional cost on magnetic media, or other electronic format that is acceptable to the State.

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

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

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

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

11. Subcontracting.

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

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

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

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

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

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

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

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

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

12. Record Retention.

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

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

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

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

13. Relief Available to State.

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

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

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

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

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

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

(f) Termination for Rejection of Deliverables. If Contractor is unable to correct Defects and Problems in a Deliverable or Service pursuant to this Exhibit , State shall have the right to immediately terminate this Contract, in whole or in part, immediately or at such other time indicated in a notice of termination

without penalty or liability to State, with such a termination being deemed a termination due to the material breach of Contractor hereunder, and return the Deliverable, if applicable, to Contractor, and other Deliverables in State's judgment. If State terminates this Contract under this Section, Contractor shall, within 20 days thereafter, refund to State all payments made to Contractor for the returned Deliverable and Services rendered therefor and other Deliverables in State's judgment, in whole or in part.

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

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

(i) Right to Assurance. If State, in good faith, has reason to believe that Contractor does not intend to, or is unable to perform or has refused to perform or continue performing all material obligations under this Contract, State may demand in writing that Contractor give a written assurance of intent to perform. Failure by Contractor to provide written assurance within the number of days specified in the demand (in no event less than five business days) may, at State's option, be the basis for terminating this Contract under the terms and conditions or other rights and remedies available by law or provided by this Contract.

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

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

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

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

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

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

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

(a) Excuse Contractor's prior performance;

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

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

(k) Guaranty.

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

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

(l) Letter of Credit.

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

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

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

13.2 Work Plan.

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

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

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

13.3 Acceptance Process.

(a) Contractor must give Confirmation for each Deliverable before State shall begin performing Acceptance Tests. Upon delivery of a Service or Deliverable and receipt of Confirmation from Contractor that the Service or Deliverable meets applicable Specifications, State will, with Contractor's assistance at no additional charge and in accordance with the Work Plan, review or perform Acceptance Tests on the Service or Deliverable, as applicable, to determine whether there is conformation to such Specifications. State will provide Acceptance for a Service or Deliverable if it has no Defects and Problems, except as noted below. However, if a Defect and Problem is found, State will notify Contractor in an e-mail or other document of Defects and Problems used as the grounds for State's decision not to give Acceptance. Contractor shall correct Defects and Problems at no cost to State and State which will review or

perform Acceptance Tests to verify whether the Service or Deliverable lacks Defects and Problems (except as noted below) and in writing shall either give its Acceptance or reject it following such review or Acceptance Tests. State's times for providing notice of Defects and Problems, Contractor's times for correcting Defects and Problems and State's review thereof shall be in accordance with the timeframes set in the Work Plan, or, if time periods for providing notice of Defects and Problems, correcting Defects and Problems by Contractor and reviewing and retesting the corrected Services or Deliverables are not in the Work Plan, each such time period shall be ten business days.

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

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

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

(e) In the event of a contradiction, conflict, ambiguity or inconsistency in or between Deliverables and other documents comprising this Contract, including without limitation, a Deliverable that has already received Acceptance from the State Project Manager, the RFP, the Response, and any future amendments to this Contract, any such contradiction, conflict, ambiguity or inconsistency shall be resolved in accordance with State's judgment and in favor of the latest State-approved Deliverable except in the case where a previous documented requirement is inadvertently omitted or not addressed directly or accurately in a subsequent Deliverable. No requirements can be omitted from the RFP

Requirements for a Service or Deliverable without the written consent of the State Project Manager.

14. Insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14.14 Failure to Maintain Insurance. Failure of the Contractor to provide and keep in force such insurance shall constitute a material default under the Contract, entitling the State to exercise any or all of the remedies provided in the Contract (including without limitation terminating the Contract). The procuring of any required policy or policies of insurance shall not be construed to limit the Contractor's liability under the Contract or fulfill the indemnification provisions of the Contract. Notwithstanding said policy or policies of insurance, the Contractor shall be responsible for the full and total amount of any damage, injury, or loss caused by the Contractor's negligence or neglect in the provision of Services or services and/or provision of Deliverables and/or Work Product under the Contract.

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

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

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

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

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

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

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

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

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

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

16. General Provisions.

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

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

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

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

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

17. Changes Initiated by Contractor.

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

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

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

**SCHEDULE 1 TO EXHIBIT 5
LETTER OF CREDIT**

Bank _____

[Month Date], 20XX__ Irrevocable Letter of Credit

Number: _____

Amount: US\$ _____

To whom it may concern:

At the request and for the account of _____, Inc. we hereby establish our Irrevocable Letter of Credit Number _____ in your favor, available by draft(s) at sight on Bank _____, up to the aggregate sum of \$ _____, inclusive of any banking charges effective as of today's date and expiring on [Month Date], 20XX.

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

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

- Nonperformance of the Contractor [Contractor Name] pursuant to Contract PSCXXXXX dated as of [Month Date], 20XX (the "Contract") for designing, developing, implementing, operating and maintaining the new EFS (as defined in the Contract), in whole and in part.
- Contractor has made an assignment for the benefit of creditors; or
- Contractor institutes or becomes subject to a liquidation or bankruptcy proceeding of any kind; or
- A receiver or similar officer has been appointed to take charge of all or part of Contractor's assets; or
- Contractor is acquired by or merges with another party, or there is otherwise a change in control (i.e., the ability, whether directly or indirectly, to direct the affairs of another by means of ownership, contract or otherwise) of Contractor to another party, including without limitation by asset or stock sale, merger, transfer of ownership, divestiture, spin-out, spin-off, or any other way; or
- Contractor terminates its maintenance and support services for State for the EFS Services or EFS System or breaches its support and maintenance obligations for State, whether due to its ceasing to conduct business generally or otherwise.

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

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

Yours faithfully,

For and on behalf of:

Bank _____

By: _____

Title: _____

SCHEDULE 2 TO EXHIBIT 5

GUARANTY

In consideration of the execution by the _____ (“State”) of the Contract dated _____, 20__ (the “Contract”) with _____ (“Affiliate”), _____ (“Parent”) unconditionally and irrevocably guarantees to the State, on the terms and conditions herein, the full and faithful performance by Affiliate of all of the obligations undertaken by Affiliate pursuant to the Contract and as it may hereafter be amended, modified, or extended from time to time, by change orders or otherwise.

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

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

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

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

By: _____
Printed Name: _____
Title: _____
Address: _____
Date: _____

SCHEDULE 3 TO EXHIBIT 5
SOFTWARE ESCROW AGREEMENT

THIS SOFTWARE ESCROW AGREEMENT (the "Agreement") is made as of this ___ day of _____, 20__ (the "Effective Date"), among _____ ("ESCROW AGENT"), _____ ("LICENSOR" or "DEPOSITOR"), and _____ ("LICENSEE" or "BENEFICIARY") (hereafter, each a "Party" or collectively "Parties").

RECITALS

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

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

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

- 1 Deposit in Escrow.
 - 1.1 Within 30 days of the Effective Date of the Main Contract, LICENSOR shall deliver to ESCROW AGENT a sealed package containing the same current version of the Source Materials in Attachment 1, which is attached hereto and incorporated herein by this reference (collectively, the "Source Materials"). LICENSOR shall identify each item in said package and certify the completeness and accuracy of the Source Materials in a letter forwarding the same to ESCROW AGENT, with a copy of each letter to LICENSEE. Such package shall also indicate whether the Source Materials are owned by LICENSOR, one of its Contracting Assisting Entities (as defined in the Main Contract) or a COTS (as defined in the Main Contract) Software provider.
 - 1.2 Escrow Agent will conduct a visual deposit inspection upon receipt of any Source Materials provide notice by electronic mail, telephone, or regular mail to the Depositor and Beneficiary of all Source Materials that is accepted and deposited into the escrow account under this Agreement. If Escrow Agent determines that the Source Materials does not match the description provided by Depositor represented in Attachment 1 attached hereto, Escrow Agent will provide Depositor with notice by electronic mail, telephone, or regular mail of such discrepancies. Escrow Agent will work directly with the Depositor to resolve any such discrepancies prior to accepting Source Materials. OTHER THAN ESCROW AGENT'S INSPECTION OF THE SOURCE MATERIALS, AS

DESCRIBED ABOVE, ESCROW AGENT SHALL HAVE NO OBLIGATION REGARDING THE ACCURACY, COMPLETENESS, FUNCTIONALITY, PERFORMANCE OR NONPERFORMANCE OF THE SOURCE MATERIALS.

- 1.3 LICENSOR shall deliver revisions of the Source Materials, including if available the Source Code for the Software, to ESCROW AGENT as and when corresponding revisions of the Software are made available to LICENSEE in accordance with the Main Contract. At such time as any modifications or revisions to the Source Materials are deposited with ESCROW AGENT, LICENSOR shall give written notice of such deposits to LICENSEE.
- 1.4 Upon receipt of a new revision, ESCROW AGENT agrees to return to LICENSOR all such Source Materials from previous revisions as specified by LICENSOR in writing to ESCROW AGENT.

2 Release From Escrow.

- 2.1 ESCROW AGENT shall, within seven days following receipt of an affidavit, which is from an officer of LICENSEE to ESCROW AGENT sent via certified mail with return receipt requested, and which states that one of the following events has occurred, proceed in accordance with the procedure described below if:
 - 2.1.1 LICENSOR has made an assignment for the benefit of creditors; or
 - 2.1.2 LICENSOR institutes or becomes subject to a liquidation or bankruptcy proceeding of any kind; or
 - 2.1.3 A receiver or similar officer has been appointed to take charge of all or a part of LICENSOR's assets; or
 - 2.1.4 LICENSOR is acquired by or merges with another party, or there is otherwise a change in control (i.e., the ability, whether directly or indirectly, to direct the affairs of another by means of ownership, contract or otherwise) of Contractor to another party, including without limitation by asset or stock sale, merger, transfer of ownership, divestiture, spin-out, spin-off, or any other way; or
 - 2.1.5 LICENSOR terminates its maintenance and support services for LICENSEE for the Software or breaches its support and maintenance obligations for the Software for LICENSEE, whether due to its ceasing to conduct business generally or otherwise; or
 - 2.1.6 LICENSOR, a COTS Software provider, or a Contractor Assisting Entity is adjudged insolvent or suffers execution of any legal or debt enforcement process over its assets; provided that in the event of any of the foregoing

with respect to a Contractor Assisting Entity or a COTS Software provider, only the Source Materials with respect to the Contractor Assisting Entity, or the COTS Software provider shall be released; or

- 2.1.7 LICENSEE has the right to terminate the Main Contract for convenience pursuant to the State Attorney General (AG) General Conditions, and for breach (which for the avoidance of doubt shall include, LICENSOR's failure to meet any requirements, timetables, milestones or other requirements herein or in the Main Contract, including, for the further avoidance of doubt, in any Annex) in accordance with its terms, whether or not it has done so; or
 - 2.1.8 LICENSOR refuses to do, or does not perform, any reasonable requests by LICENSEE for changes, modifications and/or revisions to the Software in accordance with the terms hereof or the Main Contract; or
 - 2.1.9 LICENSOR's proposed or actual charges associated with any reasonable requests by LICENSEE for changes, modifications and/or revisions to the Software are in excess of industry standard costs. Industry standard costs shall be determined by multiple bids (to the extent feasible) for requested work with reputable and established production companies, or by other commercially reasonable standards are not practical; and/or
 - 2.1.10 LICENSOR's Services or Deliverables, including delivery times as reasonably requested by LICENSEE, do not meet or will not meet commercially reasonable industry standards.
- 2.2 LICENSEE shall send a copy of the affidavit to LICENSOR via certified mail with return receipt requested, simultaneously with its affidavit to ESCROW AGENT. Upon its receipt of the affidavit as provided above in Section 2.1, ESCROW AGENT shall immediately give written notice to LICENSOR, attaching a copy of the affidavit to the notice, via commercial express mail.
- 2.3 Upon receipt of such notices in accordance with Section 2.2, LICENSOR shall have 30 calendar days to review LICENSEE's affidavit requesting release from escrow as provided for in Section 2.1 above.
- 2.4 If LICENSOR does not give notice to ESCROW AGENT within the 30 calendar days provided in Section 2.3 that LICENSEE's request for release from escrow is contested by LICENSOR, ESCROW AGENT shall automatically release the Source Materials to LICENSEE. The Source Materials shall be used by LICENSEE subject to the Main Contract and solely for support and maintenance for the Software within the provisions of the Main Contract. Delivery of the Source Materials to LICENSEE in accordance with provisions hereof shall automatically terminate this Escrow Agreement.

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

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

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

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

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

3 Ownership of Source Material.

3.1 The tangible medium comprising the escrowed Source Materials, but not the source code or technical specifications and other information embodied in such tangible media, shall be in the possession of ESCROW AGENT as soon as such material is received by ESCROW AGENT and at all times until the Source Materials are returned to LICENSOR or to LICENSEE as outlined in Section 2 above.

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

3.3 It is expressly understood and agreed that LICENSEE's right to obtain the source code and other documentation from escrow is subject to the terms described in Section 4 of the Selected Supplemental General Conditions and that LICENSEE shall have no right or claim to LICENSOR's proprietary rights in the Software.

4 Storage and Security.

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

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

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

- 4.3.1 It shall not divulge, disclose or otherwise make available to any parties other than LICENSOR or LICENSEE, or make any use whatsoever, of the Source Materials;
 - 4.3.2 It shall not permit any person access to the Source Materials, except as may be necessary for ESCROW AGENT's authorized representatives to perform its functions under this Agreement;
 - 4.3.3 Access to the Source Materials by LICENSOR shall be granted by ESCROW AGENT only to those persons duly authorized in writing by a competent officer of LICENSOR or as provided herein; and
 - 4.3.4 Access to the Source Materials shall not be granted without compliance with all security and identification procedures instituted by ESCROW AGENT.
- 4.4 ESCROW AGENT shall, upon LICENSEE's request and in accordance with Section 1.2, verify or determine that the Source Materials deposited with ESCROW AGENT by LICENSOR do, in fact, consist of those items which LICENSOR is obligated to deliver.
- 4.5 ESCROW AGENT shall accept, store and deliver the Source Materials deposited with it by LICENSOR, in accordance with the terms and conditions of this Agreement.
- 4.6 If any of the Source Materials held in escrow by ESCROW AGENT shall be attached, garnished or levied upon pursuant to an order of court, or the delivery thereof shall be stayed or enjoined by an order of court, or any other order, judgment or decree shall be made or entered by any court affecting the Source Materials or any part thereof of any act of ESCROW AGENT, ESCROW AGENT is hereby expressly authorized in its sole discretion to obey and comply with all orders, judgments or decrees so entered or issued by any court, without the necessity of inquiring whether such court had jurisdiction, and in case ESCROW AGENT obeys or complies with any such order, judgment or decree, ESCROW AGENT shall not be liable to LICENSEE, LICENSOR or any Third-Party by reason of such compliance, notwithstanding that such order, judgment or decree may subsequently be reversed, modified or vacated.
- 5 Termination.
- 5.1 The initial term of this Agreement is for a period of one year. Thereafter, this Agreement shall automatically renew from year to year unless (a) LICENSOR and LICENSEE jointly instruct ESCROW AGENT in writing that the Agreement is terminated; or (b) ESCROW AGENT instructs LICENSOR and LICENSEE in writing after its renewal date that the Agreement is terminated for nonpayment in accordance with Section 5.2. ESCROW AGENT reserves the right to terminate this Agreement, for any reason, other than for nonpayment, by providing LICENSOR and LICENSEE 90 calendar days' written notice of its intent to

terminate this Agreement. Upon ESCROW AGENT's receipt of LICENSEE's (or LICENSOR's, if LICENSOR is paying ESCROW AGENT's fees) request for a refund, ESCROW AGENT shall refund the pro rata portion of the annual renewal fee attributable to the period from the date of such termination by resignation to the next successive anniversary date. If the Source Materials are subject to another escrow agreement with ESCROW AGENT, ESCROW AGENT reserves the right, after the initial one-year term, to adjust the anniversary date of this Agreement to match the then prevailing anniversary date of such other escrow arrangements. This Agreement may also be terminated in accordance with the terms of Section 2.

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

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

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

6 Indemnification.

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

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

ESCROW AGENT shall comply with the order of a court of competent jurisdiction to release the Source Materials.

7 Fees.

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

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

8 Entire Agreement. As between LICENSOR and LICENSEE this Agreement incorporates by reference specific sections of or definitions from the Main Contract. With respect to ESCROW AGENT, this Agreement constitutes the entire Agreement among the parties, including the subject matter hereof and shall supersede all previous communications, representations, understandings and agreements, either oral or written between the parties. This Agreement is intended to be and shall be treated as an agreement separate and distinct from the Main Contract.

9 Notice. All notices regarding Section 2 shall be sent by commercial express mail. All other correspondence, including invoices, payments, and other documents and communications, shall be sent by certified, registered or regular mail to the Parties at the addresses specified on another Exhibit (if any) which shall include the individual(s) authorized to receive notices. It shall be the responsibility of the Parties to notify each other as provided in this Section in the event of a change of physical or e-mail addresses. Any Party shall have the right to rely on the last known address of the other Parties. Any correctly addressed notice or last known address of the other Parties that is relied on herein that is refused, unclaimed, or undeliverable because of an act or omission of the Party to be notified as provided herein shall be deemed effective as of the first date that said notice was refused, unclaimed, or undeliverable by postal authorities by mail, through messenger or commercial express delivery services.

10 Governing Law. This Agreement shall be governed by and construed according to the laws of the State of Hawaii. LICENSOR and ESCROW AGENT consent to

personal jurisdiction in that State. The exclusive venue of any action hereunder shall be in Honolulu, Hawaii.

- 11 Severability. In the event any of the provisions of this Agreement shall be held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.
- 12 Headings. The headings in this Agreement do not form a part of it but are for convenience only and shall not limit or affect the meaning of the provisions.
- 13 Main Contract Terms. Capitalized terms not defined in this Agreement shall have the meanings provided in the Main Contract. However, to the extent this Agreement is in conflict with the Main Contract, the terms of this Agreement shall prevail.

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

ESCROW AGENT:

By: _____

Printed Name: _____

Title: _____

Date: _____

LICENSEE:

Print Name: _____

Print Title: _____

LICENSOR:

Print Name: _____

Print Title: _____

NOTICE ADDRESS:

NOTICE ADDRESS:

Attn: _____

Title: _____

Fax: _____

Attn: _____

Title: _____

Fax: _____

ATTACHMENT 1
TO SOFTWARE ESCROW AGREEMENT
SOURCE MATERIALS

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

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

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