



STATE OF HAWAII

AGREEMENT FOR SPECIAL DEPUTY ATTORNEY GENERAL SERVICES

This Agreement, executed on the respective dates indicated below, is effective as of August 1, 2018, between the Department of the Attorney General, State of Hawaii (hereinafter "STATE"), by the Attorney General (hereinafter also referred to as "DIRECTOR"), whose address is 425 Queen Street, Honolulu, Hawaii 96813, and Hogan Lovells US LLP, a partnership under the laws of the District of Columbia (hereinafter referred to as "CONTRACTOR"), by Jim Richardell, Chief Financial Officer, whose business address and taxpayer identification number are as follows: 555 Thirteenth Street, NW, Washington, D.C. 20004; HI Fed Tax ID# 53-0084703. The member(s) of the firm primarily responsible for delivering the services under this Agreement shall be Neal Kumar Katyal, Esq., (hereinafter "Principal Attorney").

RECITALS

A. The STATE desires to retain and engage the CONTRACTOR to provide the services described in this Agreement and its attachments, and the CONTRACTOR agrees to provide said services.

B. The authority of the STATE to enter into this Agreement for Special Deputy Attorney General Services is HRS § 28-8.3.

C. Money is available to fund this Agreement pursuant to: (1) Act 49, Sec. 3K(20), SLH 2017, as amended by Act 53, Sec. 3 or (2) N/A
(Identify state sources) (Identify federal sources)

or both, in the following amounts: State \$ 185,000 Federal \$ N/A

NOW, THEREFORE, in consideration of the promises contained in this Agreement, the STATE and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the services set forth in Attachment 1, which is hereby made a part of this Agreement.

2. Time of Performance. The time of performance for this Agreement is contained in Attachment 2, which is hereby made a part of this Agreement.

3. Compensation. The CONTRACTOR shall be compensated for services rendered and costs incurred under this Agreement in a total amount not to exceed

ONE HUNDRED EIGHT-FIVE THOUSAND and 00/100 dollars (\$185,000)

including taxes, according to the Compensation and Payment Schedule set forth in Attachment 3, which is hereby made a part of this Agreement. As provided hereafter, the hourly rate of the principal attorney, the maximum fees and costs payable under this Agreement, and the amount of errors and omission insurance required of the law firm are as follows:

Hourly rate:	<u>See Attachment 3</u>
Maximum fee cap:	<u>\$ 150,000.00</u>
Maximum cost cap:	<u>\$ 35,000.00</u>
Errors & omission insurance:	<u>\$5,000,000.00</u>

4. Standards of Conduct Declaration. The Standards of Conduct Declaration by the CONTRACTOR is attached hereto and made a part of this Agreement.

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

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

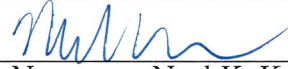
STATE

By 
RUSSELL A. SUZUKI
 ATTORNEY GENERAL

Date 8-21-18

CONTRACTOR

Hogan Lovells US LLP

By 
 Print Name Neal K. Katyal

Title Partner

Date 8/16/18

FUNDING AGENCY (to be signed by head of funding agency if other than the Attorney General)

By _____
 Print Name _____
 Title _____
 Date _____

APPROVED AS TO FORM

Deputy Attorney General, State of Hawaii

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



CONTRACTOR'S ACKNOWLEDGMENT

STATE OF District of Columbia) ss.
COUNTY OF _____

On this 16th day of August, 2018, before me personally appeared Neal K. Katyal, to me known, who being by me duly sworn, did say that he/she/they is/are the _____ of _____, the CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said instrument as the free act and deed of the CONTRACTOR.

(NOTARY SEAL)



Charmaine Ruppolt
(Signature)
Charmaine Ruppolt
(Print Name)

Notary Public, State of District of Columbia
My commission expires: 12/14/2020

Doc. Date: _____ #Pages: 25
Notary Name: _____ Circuit
Doc. Description: _____

Notary Signature

NOTARY CERTIFICATION



CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

1. By Heads of Departments or Agencies as Delegated by the Director of Human Resources Development ("DHRD").¹

Pursuant to a delegation of the authority by the Director of Human Resources Development, I certify that the services provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to §76-16, Hawaii Revised Statutes (HRS).

Russell A. Suzuki

(Signature)

Russell A. Suzuki

(Print Name)

Attorney General

(Print Title)

(Date)

This part of the form may be used by all department heads and others to whom the Director of Human Resources Development (DHRD) has delegated authority to certify §76-16, HRS, civil service exemptions. The specific paragraph(s) of §76-16, HRS, upon which an exemption is based should be noted in the contract file. **NOTE:** Authority to certify exemptions under §§ 76-16(2), 76-16(12), and 76-16(15), HRS, has not been delegated; only the Director of MIRO may certify §§76-16(2), 76-16(12), and 76-16(15) exemptions.

2. By the Director of DHRD, State of Hawaii.

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

(Signature)

(Date)

(Print Name)

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



CONTRACTOR'S STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

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

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

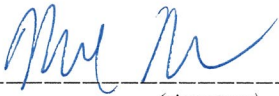
"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices,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

On behalf of Hogan Lovells US LLP, CONTRACTOR, the undersigned does declare as follows:

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

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

CONTRACTOR

By 
(signature)

Print Name Neal K. Katyal

Print Title Partner

Name of Contractor

Hogan Lovells US LLP

Date 8/16/18



SCOPE OF SERVICES

CONTRACTOR, through the Principal Attorney, Neal Kumar Katyal, Esq., shall assist the Attorney General in preparing and presenting the position of the State of Hawaii, in the United States Court of Appeals for the Ninth Circuit (and in any other court as necessary, should subsequent proceedings be initiated), in Young v. State of Hawaii, CCA No. 12-17808, on all issues that may arise in the litigation, including the question of the constitutionality of Hawaii Revised Statutes § 134-9 and any part thereof (the "MATTER").

At the Attorney General's request and direction, CONTRACTOR, through the Principal Attorney, shall provide all legal and ancillary services necessary to assist the Attorney General in representing the State of Hawaii in the MATTER, including the preparation of motions, briefs and other pleadings that may need to be filed in the Ninth Circuit or any other court as necessary, and participation in meetings and conferences in conjunction with the MATTER. Oral arguments occurring in the Ninth Circuit and in any other court will be shared as CONTRACTOR'S schedule permits and as agreed between the Attorney General and the Principal Attorney.

The Principal Attorney may utilize the services of CONTRACTOR's other attorneys and paralegals identified in this Agreement, to provide the services required under this Agreement.

Under General Condition No. 1, Deputy Attorney General and Hawaii Solicitor General Clyde J. Wadsworth, and Deputy Attorney General Kaliko'onalani D. Fernandes are designated by the Attorney General to coordinate the substantive services provided by the CONTRACTOR under this Agreement.



TIME OF PERFORMANCE

This Agreement is effective as of August 1, 2018, and shall continue in effect through and until the MATTER is finally resolved, in the United States Supreme Court or otherwise.



COMPENSATION AND PAYMENT SCHEDULE

The following provisions shall apply to all compensation and reimbursements under this Agreement.

1. Hourly rates. For the actual time expended by attorneys and legal assistants providing legal services under this Agreement, the CONTRACTOR will be compensated at the following hourly rates:
 - a.. Principal attorney
Name: Neal Kumar Katyal, Esq.
Hourly rate: \$1,550.00, less 50% Discount
 - b. Partners
Names: N/A
Hourly rate: N/A
 - c. Associates
Names and hourly rates:
Thomas P. Schmidt, \$735, less 50% discount
Colleen E. Roh Sinzdak, \$710, less 50% discount
Mitchell P. Reich, \$690, less 50% discount
Sara Aronchik Solow, \$680, less 50% discount
Elizabeth M. Hagerty, \$600, less 50% discount
 - d. Legal assistants/paralegals
Names and hourly rates: Heather Briggs, \$300, less 50% discount
2. Payments. Total payments to the CONTRACTOR under this Agreement, including those for taxes, compensation for services, and reimbursement for costs shall not exceed the maximum fee and cost caps stated in paragraph 3 on page 2 of this Agreement. In the event that the CONTRACTOR determines that the CONTRACTOR's compensation for legal services or reimbursement for costs is likely to exceed these caps, the CONTRACTOR shall immediately notify the DIRECTOR in writing, and obtain the DIRECTOR's prior written authorization to perform services for compensation in excess of this amount. Absent such authorization, the CONTRACTOR shall not be compensated for services in excess of the maximum caps.
3. Compensation. The above-referenced hourly rates, or fixed fee, as the case may be, shall be the only compensation payable to the CONTRACTOR under this Agreement, it being understood that said hourly rates, or fixed fee, as the case may be, include, without limitation, all general overhead and administrative costs such as secretarial time (regular or overtime), word processing time, use of computer-assisted research, air conditioning, and rental of equipment.

4. Clerical Tasks. The STATE will not pay for attorney or paralegal time spent performing clerical tasks, such as filing, indexing, or page numbering.
5. Reimbursable expenses.
 - a. Extraordinary expenses. Unless prior written approval of the DIRECTOR is obtained, the STATE shall have no obligation to reimburse the CONTRACTOR for any extraordinary expenses incurred by the CONTRACTOR, including without limitation, expenses for investigative services, computer litigation support services, videotaping of depositions, meals, and services of experts and consultants.
 - b. Ordinary expenses. Expenses, such as the following, incurred by the CONTRACTOR will be eligible for reimbursement from the STATE at actual cost, provided that written substantiation or verification (such as invoices and billings, and the taxpayer identification number of the entity to which payment was made) is provided, and the expenses are deemed reasonable and warranted by the STATE:
 - (1) Depositions and transcripts;
 - (2) Long-distance telephone calls;
 - (3) Postage;
 - (4) Brief-Printing;
 - (5) Photocopying;
 - (6) Outside messenger services; or
 - (7) Outgoing faxes.
6. Method of payment.
 - a. Detailed time sheets required. The CONTRACTOR shall keep contemporaneous detailed time sheets and itemized statements of costs which reflect all time spent and expenses incurred in connection with services performed under this Agreement.
 - b. Monthly billing statements.
 - (1) The billing statement shall be in detail sufficient for the STATE to identify with specificity the work performed by each individual, the time spent performing such work, and the expenses incurred. Each billing statement must contain a detailed description of the task performed and for each such task, (a) the name and title of the individual performing the task, (b) the time spent by the individual, (c) the appropriate hourly rate established above for the individual performing the work, and (d) the total amount charged for such task.
 - (2) Paralegal use. Billings for the use of paralegals should be identified as such in, the statements.
 - (3) Conferences and calls. Billings for meetings, conferences, and telephone calls must identify the participants and the subject matter discussed.

- (4) Brief-Printing and Copying costs. Billings for all brief-printing and copying costs must note the documents copied, the number of pages, and the cost per page.
- c. Monthly total summary and detail of Hawaii services. The CONTRACTOR shall also include in its monthly billing statement a separate statement regarding the total amount billed for the period, specifying the time spent performing such work and the expenses incurred, such that the total shall be divided into two subtotals: (i) the total fees and costs billed for the CONTRACTOR's services performed in the State of Hawaii and (ii) the total fees and costs billed for the CONTRACTOR's services performed outside of the State of Hawaii. The CONTRACTOR agrees and acknowledges that all information regarding the apportionment of fees and costs is subject to disclosure to the Department of Taxation and any other agency of the State of Hawaii.
7. No STATE obligation to pay. Notwithstanding any other provision of this Agreement, the STATE shall have no duty to pay the CONTRACTOR, nor any of its attorneys, legal assistants, paralegals, and any other staff, nor any other person performing services on behalf of the CONTRACTOR, unless the requirements described in this Compensation and Payment Schedule are first met to the STATE's satisfaction.
8. The STATE will not be required to pay for any services it determines to be unreasonable.



GENERAL CONDITIONS FOR AGREEMENT FOR SPECIAL DEPUTY ATTORNEY GENERAL SERVICES

TABLE OF CONTENTS

	<u>Page(s)</u>
1 . Coordination with and Reporting to the State	1
2 . Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.....	1
3 . Personnel Requirements	2
4 . Errors and Omissions Insurance and Indemnity	2
5 . Nondiscrimination	3
6 . Conflicts of Interest	3
7 . Subcontracts and Assignments	3
8 . Cost of Litigation	4
9 . STATE's Right to Offset	4
10 . Disputes	5
11 . Termination, Generally	5
12 . Termination by Contractor	5
13 . Costs and Expenses	5
14 . Payment Procedures: Final Payment; Tax Clearance	5
15 . Federal Funds	6
16 . Modification of Agreement	6
17 . Confidentiality of Material	7
18 . Publicity	7

	<u>Page(s)</u>
1 9 . Records Retention	7
2 0 . Antitrust Claims	7
2 1 . Governing Law	8
2 2 . Compliance with Laws	8
2 3 . Conflict between General Conditions and Procurement Rules	8
2 4 . Entire Agreement	8
2 5 . Severability	8
2 6 . Waiver	8
2 7 . Notices	8
2 8 . Ethics of Attorneys	9
2 9 . Campaign Contributions	9
3 0 . Confidentiality of Personal Information	9

GENERAL CONDITIONS

1. Coordination with and Reporting to the State. The DIRECTOR, by letter or in the Scope of Services, may designate a member of the DIRECTOR's staff to coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Agreement. The CONTRACTOR shall maintain communications with the person so designated at all stages of the CONTRACTOR's work, and submit to that person for resolution any questions which may arise as to the performance of this Agreement. The CONTRACTOR shall make periodic status reports to the DIRECTOR every three (3) months or at such other times as may be reasonably requested by the DIRECTOR. If the DIRECTOR does not designate a member of the DIRECTOR's staff to coordinate this Agreement, the DIRECTOR will be the coordinator of services.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Agreement, 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 Agreement; 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 Agreement. 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 Agreement, 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 Agreement. 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 Agreement, 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 Agreement, 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 Agreement.

- e. The CONTRACTOR, if subject to the tax imposed by section 237-9, HRS, 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, showing that all delinquent taxes, if any, levied or accrued against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Agreement. 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 14 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.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Agreement.
- 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 Agreement, 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.
- c. The CONTRACTOR shall promptly inform the STATE when any personnel assigned to this project leaves the employment of the CONTRACTOR, whereupon the STATE may enter into separate new agreements with any former personnel of CONTRACTOR to work on this project.

4. Errors and Omissions Insurance and Indemnity. The CONTRACTOR shall obtain and keep in force throughout the term of this Agreement a standard professional liability insurance policy that covers claims resulting from errors or omission in providing legal services under this Agreement. The policy shall provide a minimum aggregate coverage in the amount of at least FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00), subject to applicable deductibles, unless otherwise justified by CONTRACTOR and approved by the STATE. In such instance, the CONTRACTOR shall justify to the satisfaction of the STATE a coverage amount appropriate to the legal services provided

in this Agreement. Any amount less than \$5,000,000 shall be set forth as a special condition. Upon request, the CONTRACTOR shall provide the State proof of such insurance policy. In addition, and to the extent not covered by the insurance policy (for example, claims exceeding the coverage limits, or claims within the CONTRACTOR's self-insured retention), the CONTRACTOR agrees to defend and indemnify the State, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damages, costs and expenses, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors under this Agreement; provided, however, that no obligation to defend or indemnify the State shall have the effect of (i) rendering inapplicable (in whole or in part) any professional liability insurance maintained by the CONTRACTOR, (ii) extending any statute of limitations governing any claim arising from the CONTRACTOR's acts or omissions, or (iii) waiving any claims or defenses that CONTRACTOR may have against the State or any other party,

5. Nondiscrimination. No person performing work under this Agreement, 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.
6. Conflicts of Interest.
 - a. With regard to the CONTRACTOR's current clients, CONTRACTOR hereby discloses on Exhibit "A," attached hereto, a list of such clients who have interests adverse to the STATE in pending administrative actions or litigation and the nature of those interests. The execution of the Agreement by the STATE constitutes the STATE's consent to the CONTRACTOR's representation identified in Exhibit "A," but such consent is limited to the extent the representation is identified and disclosed.
 - b. With regard to potential clients whom the CONTRACTOR wishes to represent during the duration of this Agreement who have interests adverse to the STATE in then pending administrative actions or litigation, the CONTRACTOR agrees to consult with the STATE prior to representing the clients. Following consultation, the STATE shall grant or withhold its consent to the proposed representation.
7. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR's duties, obligations, or interests under this Agreement 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, showing that all delinquent taxes, if any, levied or accrued under state law 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 Agreement 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 agreement 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 Agreement but waives all rights under this Agreement as against the STATE; and
 - (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required insurance.
- b. Change of Name. When the CONTRACTOR asks to change the name in which it holds this Agreement with the STATE, the DIRECTOR or the DIRECTOR's designee shall, upon receipt of a document satisfactory to the DIRECTOR or the DIRECTOR's designee indicating such change of name (for example, an amendment to the CONTRACTOR's articles of incorporation), enter into an amendment of this Agreement with the CONTRACTOR to effect such a change of name. The amendment to this Agreement changing the CONTRACTOR's name shall specifically indicate that no other terms and conditions of this Agreement are thereby changed.
- c. Reports. All assignment contracts and amendments to this Agreement effecting changes of the CONTRACTOR's name or novation hereunder shall be reported to the chief procurement officer as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
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 Agreement, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
9. STATE's Right to Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Agreement, any amounts owed to the State of Hawaii by the CONTRACTOR under this Agreement or any other agreements 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.

10. Disputes. Disputes shall be resolved in accordance with section 103D-703, FIRS, and chapter 3-126, Hawaii Administrative Rules ("the Procurement Rules"), chapter 126, as the same may be amended from time to time.
11. Termination, Generally. This Agreement may be terminated at the option of the STATE upon ten (10) days written notice to the CONTRACTOR. If the STATE elects to terminate, the CONTRACTOR shall be entitled to reasonable payment as determined by the STATE for satisfactory services rendered under the Agreement up to the time of termination.
12. Termination by Contractor. The CONTRACTOR may withdraw from this Agreement with the consent to the STATE. Any such withdrawal must comply with the ethics standards applicable to the practice of law. The STATE's consent shall not be withheld unreasonably. The STATE, upon the CONTRACTOR's withdrawal, will determine whether payment is due to the CONTRACTOR and the amount that is due.
13. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Agreement shall be subject to chapter 3-123 (Cost Principles) of the Procurement Rules 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-size vehicle.
 - c. Unless prior written approval of the DIRECTOR is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for interisland 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.
 - d. If travel is undertaken for more than one client, the CONTRACTOR shall be reimbursed only the STATE's share or all subsistence and transportation costs. The STATE will compensate for time spent in transit only if work is done for the STATE during such transit.
14. Payment Procedures: Final Payment; Tax Clearance.
 - a. Original invoices required. All payments under this Agreement shall be made only upon submission by the CONTRACTOR of original invoices specifying the

amount due and certifying that services requested under the Agreement have been performed by the CONTRACTOR according to the Agreement.

- 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, FIRS.
 - c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be dispersed to subcontractors within ten 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 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 Agreement shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid.
15. Federal Funds. If this Agreement is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Agreement 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.
16. Modification of Agreement
- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement permitted by this Agreement shall be made by written amendment to this Agreement, signed by the CONTRACTOR and the STATE.
 - b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision or condition of this Agreement shall be permitted.
 - c. 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 Agreement, a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid.

17. Confidentiality of Material.

- a. All material given to or made available to the CONTRACTOR by virtue of this Agreement, 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.

18. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any State employee, including the DIRECTOR, or to the services or goods, or both, provided under this Agreement, 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 Agreement shall be referred to the DIRECTOR or the DIRECTOR's designee.

19. Records Retention.

- a. 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.
- b. 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 seven (7) 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 seven (7) year, or other 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.

20. 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 the STATE any and all claims for overcharges as to goods and materials purchased in connection with this Agreement, except as to overcharges which result from violations commencing after the price is established under this Agreement and which were not passed on to the STATE under an escalation clause.

21. Governing Law. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, 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 Agreement shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
22. 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 Agreement.
23. 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 Agreement became effective shall control.
24. Entire Agreement. This Agreement sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Agreement. This Agreement 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.
25. Severability. In the event that any provision of this Agreement 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 Agreement.
26. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Agreement 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 Agreement. 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 Agreement shall not constitute a waiver or relinquishment of the STATE's rights or the CONTRACTOR's obligations under the Procurement Rules or statutes,
27. Notices. Any written notice required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the STATE shall be sent to the DIRECTOR at the DIRECTOR's address as indicated in the Agreement. Notice to the CONTRACTOR shall be sent to the CONTRACTOR at the CONTRACTOR's address as indicated in the Agreement. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the STATE in writing of any change of address.

28. Ethics of Attorneys. CONTRACTOR shall abide by and perform the CONTRACTOR's duties under and pursuant to this Agreement in accordance with the ethics of the legal profession and all federal, state, and municipal laws, regulations, and ordinances regulating the practice of law.

29. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of section 11-355, TARS, 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.

30. 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 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 seven (7) 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 seven (7) year, or other retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, FIRS, or returned to the STATE at the request of the STATE.



SPECIAL CONDITIONS

Item 1 of Attachment 3 is amended by adding the following paragraph after paragraph d:

CONTRACTOR may make adjustments to staffing assignments and the hourly rates of assigned staff, at its discretion, provided that prompt notice of adjustments is furnished to the Attorney General to permit this Agreement to be modified pursuant to section 16 of the General Conditions of this Agreement.

2. Section 6 of the General Conditions entitled "Conflicts of Interest" is amended in its entirety to read as follows:

The STATE agrees that the CONTRACTOR may continue to represent, and may undertake in the future to represent a client in any matter that is not substantially related to the MATTER described in the Scope of Services of this Agreement, without the STATE's written consent, provided, however, that the CONTRACTOR agrees to give the Attorney General written notice of each such engagement in which the interests of the CONTRACTOR's client are both 1) adverse to the interests of the STATE, and 2) related in any way directly or indirectly, to the MATTER described in the Scope of Services, within a reasonable period of time after the engagement is made. Further, the CONTRACTOR agrees that in representing such clients, it will not use or disclose any confidential or proprietary information relating to its representation of the STATE in the MATTER described in the Scope of Services of this Agreement, without the STATE's written consent.