Department of Budget and Finance

RELEASE DATE: June 2, 2016

REQUEST FOR PROPOSALS
No. RFP-16-001

SEALED OFFERS
FOR

Benefit Plan Audit Services

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND (EUTF)

WILL BE RECEIVED UP TO 12:00 NOON (HST) ON

JULY 6, 2016

IN THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND, CITY FINANCIAL TOWER, 201 MERCHANT STREET, SUITE 1700, HONOLULU, HAWAII 96813. DIRECT QUESTIONS RELATING TO THIS SOLICITATION TO DEREK MIZUNO, TELEPHONE (808) 586-7390, FACSIMILE (808) 586-2320 OR E-MAIL AT EUTFADMIN@HAWAII.GOV.

Derek M. Mizuno
Procurement Officer

RE: **Request for Proposals – RFP 16-001; Benefit Plan Audit Services**

Proposal Due Date: **July 6, 2016, 12:00 Noon, Hawaii Standard Time**

The Hawaii Employer-Union Health Benefits Trust Fund (EUTF) is issuing this Request for Proposal (RFP) to identify an auditor(s) who has substantial experience in auditing health care claims processing and financial accuracy of both health insurers and pharmacy benefit managers (PBMs), and, in the case of the PBM, in performing discount analyses and evaluating the PBM's rebate administration.

The EUTF seeks an auditor(s) who appreciates that claims processing and related administrative audits are successful when they identify both claims processing problems and identify other organizational issues, and shares in the understanding that claims processing systems, management, and operations all play a role in a carrier's ability to successfully administer the EUTF's benefits.

This RFP has been divided into Sections which outline the items that are to be included in your submission (refer to the Table of Contents). The EUTF reserves the right to award multiple contracts as a result of this RFP.

Each proposal must anticipate that the OFFEROR will provide those services outlined in this RFP without exception unless said exception is specifically identified in the proposal and identified in Attachment 3, Exceptions. Any deviations from the specifications should be clearly noted in Attachment 3 and may disqualify the proposal from consideration as not responsive.

OFFERORS shall respond to all questions in this RFP and include a Word document with the required forms and responses to the Questions with their proposal. Questions should be restated and answered in order. DO NOT ALTER THE QUESTIONS. Misnumbered, incomplete, or unanswered questions may disqualify a proposal from consideration as not responsive.

The Fee Proposal Form(s) included in the RFP (Section VII) shall be used for all cost information; any other format will not be accepted. Footnotes to the form(s) may be used to provide supplemental explanations, if necessary.

This RFP is the property of the EUTF. It is to be used by those companies, organizations, and individuals to whom copies have been sent solely for the purpose of preparing quotations for the plans described herein.

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SECTION I

ADMINISTRATIVE OVERVIEW

1.1 BACKGROUND

This Request for Proposal (RFP) is issued by the Hawaii Employer-Union Health Benefits Trust Fund (EUTF), an agency of the State of Hawaii (State). The EUTF was established by Act 88, 2001 Session Laws of Hawaii. Act 88 was partially codified as Chapter 87A, Hawaii Revised Statutes (HRS). Under HRS Chapter 87A, the EUTF is authorized to design, provide, and administer health and other benefit plans for State and county employees, retirees, and their dependents (aka "employee-beneficiaries" and "dependent beneficiaries"). The benefit plans include medical, prescription drug, vision, dental, chiropractic, and life insurance. The EUTF currently provides benefit plans to over 113,000 subscribers, which include employees and retirees. When dependents are included, the participant count is approximately 199,000. The EUTF's fiscal year is July 1 through June 30. Active employee plans are on the July 1 to June 30 fiscal year; however, retiree plans are on a calendar year basis (January 1 to December 31).

The EUTF is administered by a board of ten Trustees (Board), who are appointed by the Governor. Five Trustees represent the employee-beneficiaries, one of whom represents retirees. These five Trustees are selected by the Governor from a list of candidates provided by exclusive employee representative organizations. The remaining five Trustees represent the public employers. The Board's responsibilities include determining the nature and scope of benefit plans, negotiating and entering into contracts to provide such plans, establishing eligibility and management policies, and overseeing all EUTF activities. The Board has adopted rules to implement the administration and purposes of the EUTF, go to http://eutf.hawaii.gov/rules-statutes for further information.

The EUTF's day-to-day operations are overseen by an administrator appointed by the Board (Administrator). The Administrator is assisted in managing the EUTF by an Assistant Administrator, a Member Services Branch Manager, a Financial Management Officer, and an Information Systems Chief. The EUTF is organized under three branches: Member Services, Financial Services, and Information Systems. The Member Services Branch Manager oversees the Member Services Branch and is supported by employees that are assigned customer service duties such as answering phone calls, responding to e-mails from members, and handling the processing of enrollment submissions for active employees and retirees. The Financial Management Officer is supported by accountants and account clerks who reconcile employee accounts, collect employer/employee contributions for health benefits, and process all payments. The Information Systems Chief is supported by information technology (IT) specialists that are tasked with internal IT support services, HIPAA security responsibilities, and coordinating additional support services provided by the State Department of Accounting and General Services.

In 2005, the Legislature enacted Act 245, partially codified as Chapter 87D, HRS. Act 245 temporarily permitted employee organizations to establish voluntary employees' beneficiary association (VEBA) trusts to provide health and other benefits plans to their members, including retirees. The stated purpose of Act 245 was to establish a pilot program to evaluate the costs and benefits of VEBA trusts against the EUTF. One employee organization, the Hawaii State Teachers Association (HSTA), formed a VEBA trust effective March 1, 2006 and withdrew their members from the EUTF health and other benefit plans. Effective January 1, 2011 the VEBA trust was terminated and all employees receive benefits through the EUTF. In December 2010, a State court ruled that HSTA VEBA members (actives and retirees) were entitled to the same standard of coverage in benefits when they were transitioned to EUTF on January 1, 2011. The enrollment of HSTA VEBA members into these new EUTF-created health and other benefit plans--HSTA VB plans--was done solely to comply with the Court's ruling and does not create any constitutional or contractual right to the benefits by these plans. The State does not agree with the Court's ruling. If the ruling is overturned, stayed, or modified, the EUTF reserves the right to move HSTA VB members into regular EUTF plans.

Please go to http://eutf.hawaii.gov for information about the State's benefit programs.

1.2 PURPOSE

The EUTF is soliciting proposals from qualified firms to conduct audits on its various benefit plan contracts.

All EUTF benefit plan contracts, including fully-insured plans, contain the right to audit. The objective of each audit is to evaluate operational procedures and controls established for effective plan administration, and to determine:

(1) whether claims have been paid improperly;

(2) the dollar amount of improperly paid claims;

(3) the options available to recover overpayments resulting from improperly paid claims;

(4) the benefit plan contractor's compliance with performance guarantees; and

(5) recommendations for improvement in the delivery of benefit plan services and/or plan design.

The State desires a comprehensive review of claims administration services during the initial and subsequent audit period for each benefit plan.

1.3 TERMS AND ACRONYMS USED THROUGHOUT THE SOLICITATION

BAFO	=	Best and Final Offer
Beneficiaries	=	An employee or retired employee of the state or counties that is eligible to enroll in the health plans offered by EUTF
CPO	=	Chief Procurement Officer
EUTF	=	Hawaii Employer-Union Health Benefits Trust Fund

GC	=	General Conditions, issued by the State Department of the Attorney General
GET	=	General Excise Tax
HAR	=	Hawaii Administrative Rules
HRS	=	Hawaii Revised Statutes
OFFEROR	=	Any individual, partnership, firm, corporation, joint venture, or representative or agent submitting an offer in response to this solicitation
Procurement	=	The contracting officer for the State of Hawaii, EUTF Officer
RFP	=	Request for Proposal
State	=	State of Hawaii, including its departments, agencies, and political subdivisions

1.4 CONTRACT PERIOD

The initial term of the contract will be for one (1) year. At the State's discretion, the contract may be extended to include up to four (4) additional one (1) year terms. The anticipated audit schedule is outlined in Exhibit A. The EUTF may elect to rotate subsequent audit periods based on audit results and recommendations of the auditor. Copies of the executed agreements between the EUTF and benefit plan providers will be shared with the selected auditor.

1.5 AUTHORITY

This RFP is issued under the provisions of Chapters 87A and 103D, HRS, and the implementing Administrative Rules. All prospective OFFERORS are charged with presumptive knowledge of all requirements of the cited authorities. Submission of a proposal by any prospective OFFEROR shall constitute a representation of such knowledge on the part of such prospective OFFEROR.

1.6 CONTRACT ADMINISTRATOR

This RFP is issued by the EUTF. The individual listed below is the contract administrator and the procurement officer for this procurement.

Mr. Derek M. Mizuno
Hawaii Employer-Union Health Benefits Trust Fund
City Financial Tower
201 Merchant Street, Suite 1700
Honolulu, HI 96813

1.7 RFP SCHEDULE AND SIGNIFICANT DATES

Proposals must be received by July 6, 2016, 12:00 noon, Hawaii Standard Time. Late proposals will be rejected and not considered. The table below represents the schedule that will be followed. All times indicated are based on Hawaii Standard Time (HST). EUTF reserves the right to change any date(s) as deemed necessary and in the best interest of the State of Hawaii.

Project Milestone	Date
Release of RFP	June 2, 2016
Pre-proposal conference	June 9, 2016, 10:00 AM, HST
Deadline to submit registration form	June 14, 2016
Deadline to submit written questions	June 16, 2016
EUTF's response to questions distributed	June 23, 2016
Proposals due	July 6, 2016, 12:00 Noon, HST
Discussion with Priority - Listed OFFERORS (if necessary)	August 8, 2016
Best and Final Offers due (if necessary)	August 12, 2016
Estimated date for Notice of Award	August 23, 2016
Contract start date	September 1, 2016
Commence first year audits	September 1, 2016
Final Report delivered to the EUTF	To Be Determined

1.8 PRE-PROPOSAL CONFERENCE

The purpose of the pre-proposal conference is to provide OFFERORS with an opportunity to be briefed on this procurement and to ask any questions about this procurement. The pre-proposal conference is not mandatory; however, OFFERORS are encouraged to attend to gain a better understanding of the requirements of this RFP.

OFFERORS are advised that nothing discussed at the pre-proposal conference changes any part of this RFP. All changes and/or clarifications to this RFP shall be done in the form of an addendum.

Those interested may participate in the pre-proposal conference in person, or via conference call. If your firm will be participating in the pre-proposal conference via conference call, please email eutfadmin@hawaii.gov and provide the names and titles of those attending. The telephone number of the conference line is 808-547-2399, access code 0142980. The pre-proposal conference will be held as follows:

Date: June 9, 2016

Time: 10:00 AM HST

Location: EUTF Conference Room
Hawaii Employer-Union Health Benefits Trust Fund
City Financial Tower
201 Merchant Street, Suite 1700
Honolulu, HI 96813

1.9 COMMUNICATIONS WITH THE EUTF

OFFERORS and prospective OFFERORS (including agents of OFFERORS and potential OFFERORS) shall not contact any member of the EUTF Board or any member of the EUTF staff or the EUTF's benefits consultant (Segal) except as specified in this RFP. An exception to this rule applies to companies who currently do business with the EUTF;

provided that any contact made by any such company should be related to that business, and should not relate to this RFP.

All questions regarding the RFP document shall be submitted in writing to the authorized contact person noted below in Section 1.10, *Issuing Office and Contact Person*. To facilitate a meaningful response, written questions shall reference the page, paragraph, and line or sentence to which the question relates. Such inquires must contain identification of the OFFEROR, its email address, telephone and fax numbers, and the RFP number. Questions will be accepted until the due date to submit questions specified in Section 1.7 *RFP Schedule and Significant Dates*. No telephone calls will be accepted.

The State will respond to questions through addenda/amendments by the date specified in Section 1.7 *RFP Schedule and Significant Dates*; responses to all questions will be available on the SPO website (spo.hawaii.gov) and the EUTF website (eutf.hawaii.gov) The EUTF is not responsible for delays or non-receipt of such responses or any communications by the OFFERORS.

1.10 ISSUING OFFICE AND CONTACT PERSON

This RFP is issued by the EUTF. The individual listed below is the sole point of contact from the date of release of this RFP until the selection of the winning contractor (OFFEROR). Questions will be accepted only if submitted in writing and received on or before the day and time specified in Section 1.7, *RFP Schedule and Significant Dates*.

Mr. Derek Mizuno, Administrator
Hawaii Employer-Union Health Benefits Trust Fund
201 Merchant Street, Suite 1700
Honolulu, HI 96813
Email: eutfadmin@hawaii.gov Fax: (808) 586-2320
Phone: (808) 586-7390

A copy of this RFP can also be obtained from the EUTF Web Site. The address is http://eutf.hawaii.gov/request-for-proposals.

1.11 SUBMISSION OF PROPOSALS

OFFERORS must carefully examine this RFP, all amendments issued via addendum, all required contract forms, and other documents, laws and rules, as necessary, before submitting a proposal. The submission of a proposal shall be considered to be a warranty and representation that the OFFEROR has made a careful examination and understands the work and the requirements of this RFP.

Each qualified OFFEROR shall submit only one (1) proposal to include all services that the OFFEROR will perform.

The EUTF reserves the right to award contracts to different audit firms to complete the requested services of this RFP (e.g., one contract for pharmacy and a second to encompass all other audits).

<u>OFFERORS shall submit all of the following</u>:

- One (1) signed master proposal. The master proposal must be single sided, unbound, and clearly marked "Master."

- Ten (10) hard copies of the proposal. Each copy shall be marked, "Copy __ of 10." Copies may be bound and double sided.

- Twelve (12) electronic copies (on 12 CDs) of the proposal presented in logical sections (i.e., proposal, attachments, forms). Electronic copies of the proposals shall be submitted in Word format for the completed proposal sheets and Word format for the questions with answers.

- One (1) signed hard unbound copy which redacts any propriety and confidential, trade secret information in the form of marked out pages (blanked out) of the master proposal for submission to the public under any request compliant with the public information disclosure laws of the State.

The OFFEROR's proposal, including all of its required submission types as noted above, must be received by EUTF no later than the closing date and time specified for the receipt of proposals as shown in Section 1.7, *RFP Schedule and Significant Dates*. Any proposal received after the closing date and time as specified in Section 1.7, *RFP Schedule and Significant Dates* will be rejected. No faxed or e-mailed proposals will be considered or accepted. Hand written proposals will be rejected.

Proposals shall be mailed or hand delivered by ***July 6, 2016, 12:00 noon, HST*** to:

Mr. Derek Mizuno, Administrator
Hawaii Employer-Union Health Benefits Trust Fund
201 Merchant Street, Suite 1700
Honolulu, HI 96813

If proposal is to be hand delivered, the outside envelope shall be marked, "hand delivered, proposal due July 6, 2016, 12:00 noon, HST." The outside cover of the package containing the proposal shall be marked:

State of Hawaii
Hawaii Employer-Union Health Benefits Trust Fund
Proposal submitted in Response to:
RFP 16-001, Benefit Plan Audit Services

In addition to the proposals submitted to EUTF, OFFEROR shall submit, as a courtesy, two signed hard copies and 1 CD of the proposal to SEGAL to be received no later than <u>12:00 noon, HST</u> on <u>July 6, 2016</u>, to the attention of:

Mr. Thomas M. Morrison, Jr.
The Segal Company
330 North Brand Boulevard, Suite 1100
Glendale, CA 91203

1.12 RECEIPT, OPENING, AND RECORDING OF PROPOSALS

Proposals will be time stamped upon receipt and held in a secure place by the procurement officer until the established due date. Proposals will not be opened publicly, but in the presence of two State officials on or after the proposal submission deadline specified in Section 1.7, *RFP Schedule and Significant Dates* or as amended.

The register of proposals and the proposals of the OFFEROR(s) shall be open to public inspection upon posting of award pursuant to Section 103D-701, HRS.

1.13 MODIFICATION PRIOR TO DEADLINE OR WITHDRAWAL OF OFFERS

An OFFEROR may withdraw or modify a proposal prior to the final submission date. No withdrawals or re-submissions will be allowed after the final submission date. Proposals may be modified or withdrawn, prior to the deadline for submission of proposals, by the following:

- **Modifications** – OFFEROR provides a written notice delivered by hand, mail, or fax that accompanies the actual modification received by the Procurement Officer; or OFFEROR provides a written notice that accompanies the actual modification by email to eutfadmin@hawaii.gov, provided that the OFFEROR submits the written notice along with the actual modification by hand delivery, mail, or fax within two working days of the Procurement Officer's receipt of the electronic notification.

- **Withdrawal** – OFFEROR provides a written notice received by the Procurement Officer; or a notice by email to eutfadmin@hawaii.gov.

1.14 DISCUSSION AND PRESENTATIONS

Discussions may be conducted with PRIORITY-LISTED OFFERORS, i.e., OFFERORS who submit proposals determined to be reasonably susceptible of being selected for award. Such OFFERORS may be invited to make presentations to the Evaluation Committee to clarify their proposals, to promote understanding of the EUTF's requirements and the OFFEROR's proposal, and to facilitate arriving at a contract that will provide the best value to the State. Whether such discussions and presentations will be held will be at the discretion of the Evaluation Committee. OFFEROR shall bear all responsibility for any and all costs related to making the presentations. The EUTF reserves the right to conduct the presentation in person in Honolulu or via conference call.

1.15 BEST AND FINAL OFFER

If the State determines a best and final offer (BAFO) is necessary, it shall request one from the OFFEROR. Any BAFO must be received by the Issuing Office no later than the date and time specified in Section 1.7, *RFP Schedule and Significant Dates*, or as may be amended by RFP addendum. If a BAFO is not requested by EUTF, or if requested and not submitted by an OFFEROR, the previous submittal will be construed as its best and final offer. After BAFOs are received, final evaluations will be conducted for an award. All proposals become the property of EUTF.

1.16 PREPARATION OF PROPOSAL AND COSTS

The proposal shall be formatted in accordance with the requirements specified in this RFP.

Expenses for the development and submission of proposals and other responses to the RFP are the sole responsibility of the OFFEROR submitting the proposal or other response, whether or not any award results from this RFP. Travel and expenses to and from the State of Hawaii are also the sole responsibility of the OFFEROR submitting a proposal or otherwise responding to this RFP.

1.17 DISQUALIFICATIONS OF PROPOSALS

The EUTF reserves the right to consider as acceptable only those proposals submitted in compliance with all requirements set forth or referenced in this RFP and which demonstrate an understanding of the scope of work. Any proposal offering any other set of terms and conditions, or terms and conditions contradictory to those included in this RFP, may be disqualified without further notice. All proposals must meet the minimum qualifications as established in this RFP for consideration.

Grounds for disqualification include:

- Proof of collusion among OFFERORS, in which case all proposals and OFFERORS involved in the collusive action will be rejected, and any participant to such collusion will be barred from future bidding until reinstated as a qualified OFFEROR.

- OFFEROR's lack of responsibility and cooperation as shown by past work or services rendered.

- OFFEROR being in arrears on existing contract(s) with the State or having defaulted on previous contract(s).

- Delivery of the proposal after the time specified in Section 1.7, *RFP Schedule and Significant Dates*.

- OFFEROR's failure to pay, or satisfactorily settle, all bills overdue for labor and materials on former contracts with the State at the time of issuance of the RFP.

- The proposal is unsigned.

- The proposal does not comply with applicable laws, or contains provisions contrary to applicable law.

- The proposal is conditional, incomplete, or irregular in such a way as to make the proposal ambiguous as to its meaning.

- The proposal has provisions reserving the right to accept or reject award, or to enter into agreement contract pursuant to an award, or provisions contrary to those required in the RFP.

- OFFEROR's lack of sufficient experience to perform the work contemplated.
- OFFEROR's conflicts of interest or lack of independence in judgment.
- Hand written proposals will be rejected.
- Failure to meet all of the mandatory requirements noted in Section III of this RFP

1.18 RFP AMENDMENTS AND ADDENDUM

The EUTF reserves the right to amend this RFP at any time, prior to the closing date for best and final offers.

1.19 CANCELLATION OF RFP / REJECTIONS OF PROPOSALS

This RFP may be cancelled and any or all proposals may be rejected in whole or in part, when it is determined to be in the best interests of the State or for any other reason permitted by Chapter 103D, HRS, and its implementing Administrative Rules.

1.20 UNCERTAINTIES BEYOND THE CONTROL OF THE EUTF

The EUTF recognizes that circumstances beyond the control of the EUTF may arise that may significantly affect the ability of the contractor to provide the services described in this RFP or as proposed by the contractor. Accordingly, the EUTF reserves the right to modify the contract resulting from this RFP to address such circumstances within the scope of the RFP.

1.21 PERFORMANCE AND/OR PAYMENT BONDS

No performance or payment bond is required for this RFP.

1.22 EVALUATION OF PROPOSALS

An evaluation committee of at least three (3) qualified State employees selected by the Procurement Officer shall evaluate proposals. The evaluation will be based solely on the evaluation criteria set out in Section III of this RFP.

Prior to holding any discussion, a priority list shall be generated consisting of at least three OFFERORS determined to be acceptable or potentially acceptable. However, proposals may be accepted without such discussions.

The priority listed OFFERORS may be afforded the opportunity to submit a BAFO. If a BAFO is requested, final evaluations will be conducted after BAFOs are received. If BAFOs are requested and are not submitted, the previous submittals will be construed as the BAFO.

1.23 AWARD OF CONTRACT

Method of Award. Award will be made to the responsible OFFEROR whose proposal is determined to be the most advantageous to the State based on the evaluation criteria set forth in the RFP. If award is made, the successful OFFEROR will be required to enter into a formal

written contract with the State and shall be required to sign a business associate agreement (BAA). The RFP, the OFFEROR's accepted proposal, the BAFO, and the executed contract comprise the contract. A copy of the contract form and applicable general conditions can be found in Exhibit C. A copy of the BAA can be found in Exhibit D. The RFP and the successful proposal will be incorporated in the resulting contract by reference; to the extent that they conflict, the terms of the RFP shall govern, unless otherwise agreed upon by EUTF in the contract.

Business Associate Agreement (BAA). The selected contractor may have access to protected health information and personal information maintained by the EUTF. Thus, the OFFEROR selected for award of contract shall be required to enter into a BAA with the EUTF (Exhibit D).

1.24 CONTRACT EXECUTION

Successful OFFEROR receiving award shall enter into a formal written contract in the form of Exhibit C, *Contract Form and General Conditions*. In submitting the proposal, the OFFEROR will be deemed to have agreed to each provision set forth in Exhibit C, *Contract Form and General Conditions* unless the OFFEROR specifically identifies the provision to which objection is made and submits alternative language. The EUTF shall have no obligation to accept terms and conditions that vary from those set forth in Exhibit C, *Contract Form and General Conditions*, the contract awarded pursuant to this RFP and any amendments thereto.

Upon selection and award of the contract(s), EUTF will send the formal contract(s) and BAA to the successful OFFEROR for signature. The contract and BAA shall be signed by the successful OFFEROR and returned with any required documents, within 7 calendar days after receipt by the OFFEROR or within such time as EUTF may allow. Failure to keep this deadline may result in a cancellation of the award and contract. EUTF reserves the right to cancel any contract, and request new proposals or negotiate with remaining OFFERORS, if EUTF is not satisfied with the awarded contractor's performance.

No work is to be undertaken by the Contractor prior to the effective date of contract. The State is not liable for any work, contract costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor prior to the official starting date. No contract shall be considered binding upon the EUTF until the contract has been fully and properly executed by all parties thereto.

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

1.25 RESPONSIBILITY OF OFFERORS

OFFERORS are advised that in order to be awarded a contract under this solicitation, the OFFEROR will be required to be compliant with the following chapters of HRS pursuant to HRS §103D-310(c) upon award of a contract:

1. Chapter 237, General Excise Tax Law;
2. Chapter 383, Hawaii Employment Security Law;
3. Chapter 386, Worker's Compensation Law;
4. Chapter 392, Temporary Disability Insurance;
5. Chapter 393, Prepaid Health Care Act; and
6. §103D-310(c), Certificate of Good Standing (COGS) for entities doing business in the State.

If the OFFEROR is not compliant with the above HRS chapters at the time of award, the OFFEROR will not receive the award. To demonstrate compliance, OFFERORS are encouraged to subscribe to Hawaii Compliance Express (HCE). OFFERORS who do not participate in HCE may submit paper compliance certificates to the EUTF.

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

OFFERORS who are interested in registering in HCE should do so prior to submitting an offer at https://vendors.ehawaii.gov. The annual registration fee is currently $12.00 and the 'Certificate of Vendor Compliance' is accepted for the execution of contract and final payment.

1.26 PUBLIC EXAMINATION OF PROPOSALS

Except for confidential portions, the proposals shall be made available for public inspection upon posting of award pursuant to Section 103D-701, HRS.

If a person is denied access to a State procurement record, the person may appeal the denial to the State office of information practices in accordance with Section 92F-42(12), HRS.

1.27 DEBRIEFING

Pursuant to Section 3-122-60, HAR, a non-selected OFFEROR may request a debriefing to understand the basis for award.

A written request for debriefing shall be made within three (3) working days after the posting of the award of the contract. The Procurement Officer or designee shall hold the debriefing

within seven (7) working days to the extent practicable from the receipt date of written request.

Any protest by the requestor following a debriefing, shall be filed within five (5) working days after the date that the debriefing is completed, as specified in Section 103D-303(h), HRS.

1.28 PROTEST PROCEDURES

Pursuant to Section 103D-70, HRS and Section 3-126-3 HAR, an actual or prospective 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 Procurement Officer at:

Mr. Derek M. Mizuno
Hawaii Employer-Union Health Benefits Trust Fund
201 Merchant Street, Suite 1700
Honolulu, HI 96813

A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers. Further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award or if requested, within five (5) working days after the Procurement Officer's debriefing was completed.

The notice of award, if any, resulting from this solicitation shall be posted on the Procurement Awards, Notices and Solicitations (PANS), which is available on the State's Procurement Office website: http://www.hawaii.gov/spo2/source/.

1.29 LIQUIDATED DAMAGES

In the event of any breach of the contract by OFFEROR, liquidated damages shall be assessed against contractor in the sum of Five Thousand and No/100 Dollars ($5,000.00) per calendar day until the breach is remedied by contractor.

1.30 INSURANCE

Prior to the contract start date, the Contractor shall procure at its sole expense and maintain insurance coverage acceptable to the State in full force and effect throughout the term of the Contract. The OFFEROR shall provide proof of insurance for the following minimum insurance coverage(s) and limit(s) in order to be awarded a contract. The type of insurance coverage is listed as follows:

1. Commercial General Liability Insurance

   Commercial general liability insurance coverage against claims for bodily injury and property damage arising out of all operations, activities or contractual liability by the Contractor, its employees and subcontractors during the term of the Contract. This insurance shall include the following coverage and limits specified or required by any applicable law:

bodily injury and property damage coverage with a minimum of $1,000,000 per occurrence; personal and advertising injury of $1,000,000 per occurrence; broadcasters' liability insurance of $1,000,000 per occurrence; and with an aggregated limit of $2,000,000. The commercial general liability policy shall be written on an occurrence basis and the policy shall provide legal defense costs and expenses in addition to the limits of liability stated above. The Contractor shall be responsible for payment of any deductible applicable to this policy. Throughout the entire term of the contract, the EUTF, the Board, and its trustees shall be named as additional insureds on the commercial general liability insurance policy, and the policy shall contain the following clause, "The State of Hawaii, the Hawaii Employer-Union Health Benefits Trust Fund (EUTF), the EUTF Board of Trustees, and trustees of the EUTF Board are added as additional insureds with respect to operations performed for the State of Hawaii and the EUTF."

2. Automobile Liability Insurance

   Automobile liability insurance covering owned, non-owned, leased, and hired vehicles with a minimum of $1,000,000 for bodily injury for each person, $1,000,000 for bodily injury for each accident, and $1,000,000 for property damage for each accident. Throughout the entire term of the contract, the EUTF, the Board, and its trustees shall be named as additional insureds on the automobile liability insurance policy, and the policy shall contain the following clause, "The State of Hawaii, the Hawaii Employer-Union Health Benefits Trust Fund (EUTF), the EUTF Board of Trustees, and trustees of the EUTF Board are added as additional insureds with respect to operations performed for the State of Hawaii and the EUTF."

3. Professional Liability (Errors and Omissions) Insurance

   Professionals Liability Insurance covering all activities under the contract with a minimum of $1,000,000 per claim and with an aggregated limit of $2,000,000.

4. Appropriate levels of per occurrence insurance coverage for workers' compensation and any other insurance coverage required by Federal or State law.

The Contractor shall deposit with the EUTF, on or before the effective date of the Contract, certificate(s) of insurance necessary to satisfy the EUTF 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 EUTF during the entire term of the Contract. Upon request by the EUTF, the Contractor shall furnish a copy of the policy or policies.

The Contractor will immediately provide written notice to the EUTF should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed up expiration.

The certificates of insurance shall contain the following clause:

> "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."

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 hereunder, or to 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 under the Contract.

1.31 PAYMENT TO CONTRACTOR

Payment to contractor will be done in arrears, after the review phases described in the fee section are completed. Such payments shall be made within 45 days following receipt of invoice. If the 45th day of the month falls on a weekend or holiday, the payment will be made on the next succeeding weekday that is not a holiday.

1.32 FUNDING

Execution of any contract between the State and the successful OFFEROR is contingent upon the availability of funds. In addition, any contract resulting from this RFP shall be enforceable only to the extent of the availability of funds. No damages or interest shall accrue against the State or EUTF as a result of the non-availability of funds.

SECTION II

PROPOSAL INSTRUCTIONS

SPECIFIC INSTRUCTIONS FOR COMPLETING THIS REQUEST FOR PROPOSAL

1. CONTENT OF PROPOSAL

The OFFEROR shall adhere to all instructions listed in Section 1.11, *Submission of Proposals*, and prepare a written proposal that will fully describe the qualifications and availability of the OFFEROR to provide the services requested and the compensation the OFFEROR proposes in response to this RFP. The proposal shall include, without limitation, the following:

- Cover letter
- Offer Form, OF-1 (Attachment 1)
- OFFEROR Information Sheet (Section V)
- Completed Questionnaire (Section VI)
- Fee Proposal Form (Section VII)
- Required attachments:
  - Documents to demonstrate OFFEROR's financial stability (Section III)
  - Completed Reference Information Questionnaire, Attachment 7
- Include, if applicable:
  - Exceptions, Attachment 3
  - Confidential Information, Attachment 4
- Any additional attachments/marketing information not required but that you want to present

2. COVER LETTER

The RFP response must include a cover letter addressed to the Administrator. The letter, which will be considered an integral part of the Proposal, must contain the following:

- Contact Information – The cover letter shall include the OFFEROR's name, address, telephone/fax numbers, and e-mail address.

- Terms and Conditions of RFP – A statement that the OFFEROR fully understands and will comply with all terms and conditions contained in the RFP. The OFFEROR must include written acknowledgment of receipt of any and all amendments or addenda made to this RFP.

- Legal Entity – A statement indicating that the OFFEROR is an individual, a partnership, a limited liability company, a corporation or other legal entity (as identified). If the OFFEROR is a corporation, a partnership, a limited liability company or other legal entity, include a statement indicating the jurisdiction where the OFFEROR is organized.

- Authorized Signature - The cover letter must be signed, in blue ink, by an individual or individuals authorized to legally bind the OFFEROR. If the OFFEROR is a corporation, evidence in the form of a certified copy of a corporate resolution or certified copy of articles of incorporation or bylaws shall be submitted showing the individual's authority to bind the corporation. If the OFFEROR is a partnership, the proposal must be signed by all the partners, or evidence in the form of a certified copy of the partnership agreement shall be submitted showing the individuals' authority to bind the partnership. Similar evidence must be submitted for an individual signing the proposal letter on behalf of any kind of entity.

- Current Registration – An OFFEROR must provide evidence that the OFFEROR is registered to do business in the State of Hawaii prior to commencement of the work. True and accurate copies of the OFFEROR's certificates must be provided. See Section 1.25, *Responsibility of Offerors*.

- Subcontracting of Services - A statement by the OFFEROR indicating that the work described in the RFP will not be subcontracted. If subcontractors will be used, append a statement to the cover letter from each subcontractor, signed in blue ink, by an individual authorized to legally bind the subcontractor stating: 1) the general scope of work to be performed by the subcontractor, and 2) the subcontractor's willingness to perform the indicated tasks. The extent to which the work will be subcontracted and the qualifications of any subcontractor will be considered in evaluating the OFFEROR's ability to perform the service referred to in the RFP.

- Non-Discrimination - A statement that the OFFEROR does not discriminate in employment or business practices with regard to race, color, religion, age (except as provided by law), sex, sexual orientation, marital status, political affiliation, national origin, disability, or any other characteristic protected by federal, state or local laws.

- Terms and Conditions of Contract - Affirm that the provisions of the sample contract in Exhibit C, *Contract Form and General Conditions* are acceptable or state that any proposed modifications are included in Attachment 3, *Exceptions*. The EUTF reserves the right to decline or classify as "unresponsive" any substantive changes, modifications, or revisions to the provisions of the sample contract.

3. OFFER FORM, OF-1

Attachment 1, Offer Form, OF-1 is required to be completed using the OFFEROR's exact legal name as registered with the State of Hawaii Department of Commerce and

Consumer Affairs, if applicable, in the appropriate space on Offer Form, OF-1. Failure to do so may delay proper execution of the contract.

The OFFEROR's authorized signature on the Offer Form, OF-1 shall be an original signature in blue ink, which shall be required before an award, if any, can be made. The submission of the proposal shall indicate the OFFEROR's intent to be bound.

4. RESPONSE TO QUESTIONS

Clear and concise answers are required to facilitate the evaluation of proposal; responses must also be provided in Word format. Any additional information shall be provided as an appendix to the proposal.

5. FEE PROPOSAL

Fee tables in Section VII shall be submitted with the proposal.

6. CONFIDENTIAL AND PROPRIETARY INFORMATION

The OFFEROR shall list in Attachment 4, *Confidential Information*, those portions of the proposal that contain trade secrets or other proprietary data/information that the OFFEROR wishes to remain confidential. The OFFEROR shall follow the instructions under Section 1.11, *Submission of Proposals*, for submitting a redacted copy of its proposal. The OFFEROR must also include on Attachment 4 a detailed explanation as to why this information is considered confidential, with respect to the requirements of Chapter 92F, HRS. Any request for public inspection is subject to the requirements of Chapter 92F, HRS. The entire proposal CANNOT be considered confidential. The fee proposal CANNOT be considered confidential. With the indication of sections that are deemed proprietary and confidential, the OFFEROR must include a written explanation of the nature and rational for considering the information as confidential.

7. AWARD OR REJECTION

Any award will be made to that OFFEROR whose proposal is deemed to be in the best interest of the EUTF. The EUTF reserves the right to reject any or all proposals. Proposals will not be returned.

8. ORAL EXPLANATIONS

The EUTF will not be bound by oral explanations or instructions given during the competitive process or after the award of the contract.

9. TIME FOR ACCEPTANCE

The OFFEROR agrees to be bound by its proposal for a contract effective date as stipulated in Section 1.4, *Contract Period;* the EUTF may request clarification of the proposal for the purpose of evaluation. Late proposals will not be accepted.

10. EXCEPTIONS

Any exceptions to terms, conditions, or other requirements in any part of these specifications must be listed in Attachment 3 marked "EXCEPTIONS". OFFEROR shall reference the RFP section where the exception is taken, a description of the exception taken, and the proposed alternative, if any. Otherwise, it will be considered that all items offered are in strict compliance with the specifications. Amendments or clarifications shall not affect the remainder of the proposal, but only the portion so amended or clarified. In instances where there is a material difference between a proposal and an eventual contract, the proposal terms will be binding unless specifically accepted as an exception stipulated in the contract. The State reserves the right to accept or reject any request for exceptions.

11. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) COMPLIANCE

All OFFEROR systems and services must be in compliance with the HIPAA EDI, Privacy, and Security regulations on the appropriate dates established by the Department of Health & Human Services. A copy of EUTF's standard BAA is contained in Exhibit D of this RFP. The successful OFFEROR shall be required to sign the BAA.

12. SUBMISSION OF A SIGNED PROPOSAL

Submission of a signed proposal shall be construed as the OFFEROR's strict adherence to this RFP, unless otherwise noted in writing in the required Attachment 3 marked "EXCEPTIONS." Failure to meet any of these conditions may result in disqualification of proposals. This RFP and the OFFEROR's proposal, including all subsequent documents provided during this RFP process, will become part of the contract between the parties.

PROPOSAL EVALUATION

Evaluation criteria and the associated points are listed below. The award will be made to the responsible OFFEROR whose proposal is determined to be the most advantageous to the State based on the evaluation criterial listed in this section. Award may be made without further discussion of proposals received; therefore, it is important that the proposal be submitted initially in the most complete terms from both the technical and cost standpoint. Fees are requested on an all-inclusive rate that shall remain fixed for the period of the contract, which could include a change in plan administrators.

INTRODUCTION

The EUTF seeks the highest quality organization to provide claims processing and related administrative audits of its pharmacy, medical, dental, vision, and life insurance providers. Throughout the selection process, the EUTF reserves the right, in its sole discretion:

a. To not award the contract to the lowest cost OFFEROR.

b. To not award the contract at all.

c. To award more than one contract.

d. To modify the timing and frequency of annual audits.

EVALUATION PROCESS

An Evaluation Committee selected by the Procurement Officer will review and evaluate all proposals submitted by the deadline specified in this RFP. The evaluation process will be conducted in up to six phases:

Phase 1- Evaluation of Mandatory Requirements

Phase 2- Evaluation of Proposal

Phase 3- Interviews with Priority-Listed OFFERORS (Optional)

Phase 4- Best and Final Offers (Optional)

Phase 5- Final Evaluation of Proposals (Optional)

Phase 6- Award

EVALUATION CRITERIA

The evaluation criteria employed shall be:

1. **Evaluation of proposal – Maximum 60 Points**

   a. **25 points -- Audit Plan Design**: The OFFEROR's audit plan design will be evaluated in accordance with the goals and objectives specified in the RFP and the OFFEROR's responses to the questionnaire.

   b. **25 points -- Experience**: The OFFEROR's prior experience auditing health benefit claims for other accounts will be considered, along with the submitted reference information questionnaires (Attachment 7). The experience and qualifications of each member of the staff providing the audit services will also be evaluated.

   c. **10 points -- Contract Management Plan**: The OFFEROR's plan for managing the audits and timelines required by this proposal will be evaluated.

2. **Price Evaluation – Maximum 40 Points**

   Points awarded for price shall be done as follows:

   The OFFEROR proposing the lowest total fee will receive the maximum points that are available for a given category. The total fee includes all audit periods including extensions for the audit category. A maximum of 40 points will be awarded. Other OFFERORS will be awarded points based on the following formula:

   $$\frac{\text{Fee proposed by lowest Offeror X maximum points available}}{\text{Fee proposed by Offeror}} = \text{Points awarded to Offeror}$$

   In the event that one OFFEROR bids on more than one audit category, and proposes a discount (shown as a percentage) for being awarded multiple contracts, the OFFEROR's proposal score for the price evaluation will be scored using the formula as stated above taking into consideration the proposed fee with and without any discount that may be proposed.

PHASE 1 – EVALUATION OF MANDATORY REQUIREMENTS

The evaluation of the mandatory requirements shall be on a "pass/no pass" basis. The purpose of this phase is to determine whether an OFFEROR's proposal is sufficiently responsive to the RFP to permit a complete evaluation. Each proposal will be reviewed for responsiveness. Failure to meet the mandatory requirements ("no pass") will be grounds for deeming the proposal non-responsive to the RFP and rejection of the proposal. Only those proposals meeting all of the following requirements ("pass") of Phase 1 will be considered in Phase 2.

- Submission of a completed cover letter, Offer Form OF-1, OFFEROR Information Sheet, completed questionnaire, and fee proposal form.

- Submission of completed references as noted in Attachment 7.
- Financial Stability of the OFFEROR as demonstrated by a certified statement provided by its chief financial officer or an equivalent position that the OFFEROR intends and has the financial resources to operate for the next 12 months. OFFEROR shall also provide its most recent audited financial statements. OFFEROR shall mark this information as Confidential Information.

PHASE 2 – EVALUATION OF PROPOSAL

All OFFERORS who pass Phase 1, Evaluation of Mandatory Requirements, shall be classified as "acceptable." Following the evaluation of all proposals, the Evaluation Committee may establish a priority list of OFFERORS who received the highest scoring evaluations. The order, priority and points to be applied are as listed below.

Criteria	Points
Evaluation of Proposal	60
Price Evaluation	40
Total	**100**

Each proposal will be evaluated on its own merit with comparison to the scope of services and project requirements outlined within this RFP. A maximum of 60 points shall be awarded for the proposal. Points will be awarded as follows:

a. **Audit Plan Design** – The OFFEROR's audit plan design will be evaluated in accordance with the goals and objectives specified in the RFP and the OFFEROR's responses to the questionnaire. (Maximum 25 points)

b. **Experience** – The OFFEROR's prior experience auditing health benefit claims for other accounts will be considered, along with the submitted reference information questionnaires (Attachment 7). The experience and qualifications of each member of the staff providing the audit services will also be evaluated. (Maximum 25 points)

c. **Contract Management Plan** – The OFFEROR's plan for managing the audits and timelines required by this proposal will be evaluated. (Maximum 10 points)

A maximum of 40 points shall be awarded for the price of services. Points awarded for price shall be calculated as follows.

The OFFEROR proposing the lowest total fee will receive the maximum amount of points (40 points). The total fee includes all audit periods including extensions for the audit category. Other OFFERORS will be awarded points based on the following formula:

$$\frac{\text{Fee proposed by lowest Offeror} \times \text{maximum points available}}{\text{Fee proposed by Offeror}} = \text{Points awarded to Offeror}$$

In the event that one OFFEROR bids on more than one audit category, and proposes a discount (shown as a percentage) for being awarded multiple contracts, the OFFEROR's proposal score for the price evaluation will be scored using the formula as stated above taking into consideration the proposed fee with and without any discount that may be proposed.

PHASE 3 – INTERVIEWS WITH PRIORITY-LISTED OFFERORS (OPTIONAL)

In this phase, the Evaluation Committee and the Procurement Officer may request presentations from the priority-listed OFFERORS to be conducted in Honolulu in person or via conference call during the period indicated in Section 1.7 *RFP Schedule and Significant Dates*.

PHASE 4 – BEST AND FINAL OFFERS (OPTIONAL)

In this phase, the PRIORITY-LISTED OFFERORS may be asked to submit a BAFO for the services that are being requested under this RFP.

PHASE 5 – FINAL EVALUATION OF PROPOSALS (OPTIONAL)

In this phase, the Evaluation Committee will conduct final evaluations of the PRIORITY-LISTED OFFERORS' proposal/BAFOs using the criteria stated in Phase 2.

Criteria	Points
Evaluation of Proposal	60
Price Evaluation	40
Total	**100**

A maximum of 60 points shall be awarded for the proposal. Points will be awarded as follows:

a. **Audit Plan Design** – The OFFEROR's audit plan design will be evaluated in accordance with the goals and objectives specified in the RFP and the OFFEROR's responses to the questionnaire. (Maximum 25 points)

b. **Experience** – The OFFEROR's prior experience auditing health benefit claims for other accounts will be considered, along with the submitted reference information questionnaires (Attachment 7). The experience and qualifications of each member of the staff providing the audit services will also be evaluated. (Maximum 25 points)

c. **Contract Management Plan** – The OFFEROR's plan for managing the audits and timelines required by this proposal will be evaluated. (Maximum 10 points)

A maximum of 40 points shall be awarded for the price of services. Points awarded for price shall be calculated as follows:

The OFFEROR proposing the lowest total fee will receive the maximum amount of points (40 points). The total fee includes all audit periods including extensions for the audit category. Other OFFERORS will be awarded points based on the following formula:

$$\frac{\text{Fee proposed by lowest Offeror X maximum points available}}{\text{Fee proposed by Offeror}} = \text{Points awarded to Offeror}$$

In the event that one OFFEROR bids on more than one audit category, and proposes a discount (shown as a percentage) for being awarded multiple contracts, the OFFEROR's proposal score for the price evaluation will be scored using the formula as stated above taking into consideration the proposed fee with and without any discount that may be proposed.

PHASE 6 – AWARD

The EUTF Board will make the final selection.

SECTION IV

SCOPE OF WORK

BACKGROUND

A description of the current benefits can be found on EUTF's website (http://eutf.hawaii.gov).

Effective January 1, 2011 the EUTF began providing separate plans to all members of the HSTA who were formerly enrolled in the HSTA VEBA plans ("HSTA VB"). Benefit variances may be seen between the EUTF and HSTA VB plans, as well as the coverage for Active and Retiree participants.

The following five (5) categories will be audited during the course of the OFFEROR's contract. EUTF reserves the right to change benefit plan carriers during the course of the audit contract and to modify the frequency and/or scope of review components annually.

Category 1	Prescription Drug Plans
Category 2	Medical Plans (including Chiropractic and Supplemental Medical and Prescription Drug)
Category 3	Dental Plans
Category 4	Vision Plans
Category 5	Life Insurance

The EUTF reserves the right to award multiple contracts as a result of this RFP, in which case separate contracts may be awarded for Categories 1 through 5.

INSTRUCTIONS

This Section sets out specifications for the audit services that the EUTF is seeking through this RFP. Unless an OFFEROR expressly and specifically makes an exception to or identifies a deviation from these specifications in its proposal, and identifies such exceptions on Attachment 3 *Exceptions*, the OFFEROR's proposal will be deemed to meet and abide by all specifications set forth in this Section. EUTF reserves the right to accept or reject any request for exceptions. Otherwise, the OFFEROR's proposal will be deemed to accept and agree to all the contractual requirements. The EUTF is under no obligation to agree to any exception or deviation proposed by an OFFEROR, and will take any such exceptions and deviations into account in evaluating the OFFEROR's proposal. All proposals are to be all inclusive of expenses and charges. The EUTF will not pay an additional amount for any ancillary charges for any items, including, for example, overhead, travel, telephone, local office expenses, shipping or printing.

SERVICES REQUIRED

The EUTF offers a comprehensive benefits program to state and county active employees and retirees, which are also made available to COBRA and Premium Conversion Plan participants. Benefits may differ between two general classifications (EUTF and HSTA VB) and the participant's status (i.e., active, retiree under 65, retiree over 65). Active and Retiree plan benefit summaries can be found at http://eutf.hawaii.gov. Following are the 5 categories of benefit plans (both EUTF and HSTA VB) subject to the audit services defined within this RFP.

Category 1 **Prescription Drug Plans**
Caremark – Active
Caremark – Retiree Under 65
SilverScript – Retiree Over 65 (EGWP)

Category 2 **Medical Plans**
HMSA – Active PPO and HMO
HMSA – Retiree PPO
Kaiser – Active HMO
Kaiser – Retiree Under 65 HMO
Kaiser – Retiree Over 65 Senior Advantage Plan
Royal State – Active Medical and Prescription Drug Supplemental
Royal State – Active Chiropractic
Royal State – Retiree Chiropractic (HSTA VB only)

Category 3 **Dental Plans**
HDS Dental – Active
HDS Dental – Active Supplemental (HSTA VB only)
HDS Dental - Retiree

Category 4 **Vision Plans**
VSP – Active
VSP – Retirees

Category 5 **Life Insurance**
Royal State – Active (terminated June 30, 2015)
USAble Life – Active (effective July 1, 2015)
Royal State—Retiree (terminated December 31, 2014)
USAble Life – Retiree (effective January 1, 2015)

OFFERORS should recognize that the EUTF may solicit new RFPs for the above benefit plans during the audit contract term; however, no change is expected for the audit scope of services and fees associated with this RFP process.

The number of covered members (employee, retiree, and dependents) enrolled during the Fiscal Year Ending June 30, 2015 is provided in Exhibit B.

AUDIT PERIOD

The initial audit period for the active and retiree plans are described in Section VII, Fee proposal and Exhibit A, Audit Schedule. OFFEROR must agree to an audit timetable approximate to that which appears in Section VII, Fee Proposal which is subject to annual adjustments based on prior findings, auditor recommendations, and budget.

Where multiple benefit plan contract years are audited simultaneously, the EUTF anticipates the written report will document findings for the separate performance guarantee periods.

AUDIT OBJECTIVES

The State desires a comprehensive review of the benefit plan claims administration services during the initial audit period for each benefit plan contractor. The objective of each audit is to evaluate operational procedures and controls established for effective plan administration, and to determine:

(1) whether claims have been paid improperly;

(2) the dollar amount of improperly paid claims;

(3) the options available to recover overpayments resulting from improperly paid claims;

(4) the benefit plan contractor's compliance with performance guarantees; and

(5) recommendations for improvement in the delivery of benefit plan services and/or plan design.

A combination of electronic and sampling methodologies are expected to assess the accuracy and timeliness of benefit reimbursements. Variables in approach can be expected for the type of plan (i.e., medical vs. prescription drug), the benefit plan contractor's audit policies outlined within the benefit plan contract, and as required to address any issues and concerns EUTF personnel may express in their relationship with each contractor. The executed agreements for each benefit plan will be provided to the winning OFFEROR.

AUDIT COMPONENTS

Five anticipated audit components are defined below with the minimum requirements. The components applicable to each audit period and benefit plan contractor are outlined in Section VII and Exhibit A. EUTF reserves the right modify the scope and frequency of the audits based on prior audit findings and recommendations.

A. **Operational Review** (prescription drug, medical, dental, vision, and USAble life insurance - excludes Royal State life insurance) shall explore the day-to-day administrative policies, procedures, and internal quality control measures critical to minimizing financial loss and maintaining participant satisfaction levels. Review of the vendor's SOC-1 report is to be supplemented with a questionnaire specific to the respective contractor's administration of the EUTF's Plan. Topics shall include, but not be limited to:

- Divisions of staff and administrative functions assigned to the EUTF Plan, with identification of any outsourced services;
- Eligibility receipt, timely update, reconciliation procedures, and system interfaces;
- Detection of other coverages (i.e., coordination with group and Medicare benefits, workers' compensation, third party liability);
- System edits for detection of coding errors (i.e., unbundled or upcoded medical services, inconsistent drug codes) and alerts for claims requiring manual review and processing;
- Procedures employed to identify potential fraud and abuse (i.e., over utilization of physical therapy, prescription refills filled too soon, etc.);
- Coordination with departments related to claim administration (i.e., medical review, preauthorization, case management);
- Maintenance of provider files and fee schedules with distinction between contracted and non-network providers for medical claims, and application of appropriate generic vs. brand and formulary vs. non-formulary drugs; and
- Quality assurance procedures to monitor benefit accuracy in accordance with Plan provisions and industry best practices.

B. **Eligibility Comparison** (all categories) of EUTF's file to paid claims data to identify payments made for any ineligible date of service.

C. **Electronic Analysis** (all categories) of all claims for potential duplicate payments and other components applicable to the audit subject and OFFEROR's capabilities.

D. **Statistical Sampling** (medical categories) for measurement of processing performance (financial and incidence) with comparison to self-reported achievements.

E. **Assessment of Performance Guarantees** (prescription drug, medical, dental, vision, and USAble life insurance - excludes Royal State life insurance) with validation of source documents used to self-report each category and comparison of self-reported achievements to sampled claim audit results.

A **Written Report of Findings** shall be presented in draft form to the respective benefit plan contractor for review and comment in which their response to the findings shall to be incorporated into the final draft report provided for the EUTF's review. As applicable to each audit, this written evaluation shall include:

- Objectives of the audit;
- Procedures taken to complete the audit;
- Evaluation of the vendor's policies and administration for managing claims costs to ensure that procedures support maximized savings;
- Number of claims examined and total paid amount of the claims;

- Number and dollar value of claims with financial errors and procedural errors expressed as a percentage of the total claims audited;
- A description of the error categories found during the review with attention to systemic or human cause and required corrective measures;
    - Identify error patterns or trends, identify causes, assess effects, and provide recommendations for corrections.
    - Provide a table of payment errors with a clear description of the sampled error and/or other errors detected through review of the patient's history; the report should clearly identify those errors that were subject to internal audit but bypassed detection.
- An action plan for overpayment recovery should be included within the report recommendations;
- Comparison of audit results to performance guarantees and industry standards;
- Recommendations to improve overall administration and/or claims processing accuracy;
- Comparison of current year's audit with prior year results (for subsequent audits); and
- Summary comments and recommendations for each plan regarding improving plan design to ensure that the EUTF receives high quality services in a cost effective, timely manner.

Category 1 - Prescription Drug Audits shall consist of an electronic audit of all (100%) prescription transactions administered by Caremark and SilverScript (excludes Kaiser) to include the following review components.

- Member eligibility for the date of service(s)
- Independent verification of average wholesale price (AWP)
- Comparison of actual aggregate claim discounts and dispensing fees to contractual guarantees
- Comparison of actual claim adjudication to plan design and benefit rules
- Member cost share
- Duplicate claims
- Coverage rules
- Identification of contractual term improvement opportunities
- Consistency in coordination of benefits, including subrogation and workers' compensation

The Rebate Review shall include all payments from manufacturers or other third parties to the pharmacy benefit manager (PBM) as they relate to the EUTF's plan. The manufacturer payment and rebate audit shall include a comprehensive review that includes:

- Identification of all rebatable claims and identification of categories properly excluded from rebates, according to the PBM contract
- Verification of earned rebates by quarter by National Drug Code (NDC)
- Comparison of earned rebates file to manufacturer rebate submission file
- Onsite review of applicable manufacturer contracts to verify all rebate amounts due are properly paid to the EUTF
- Comparison of PBM receipts from manufacturers to earned rebate file
- Comparison of actual rebates to contractual guarantees

The initial financial and plan design audit conducted in calendar year 2016 will include active plans from July 1, 2013 through June 30, 2015 (Caremark) and retiree plans from July 1, 2013 through December 31, 2014 (Caremark non-Medicare retirees and SilverScript Medicare retirees).

Category 2 - Medical Plan Claims Audits (including Chiropractic and Supplemental Coverages) shall consist of the following review components noted below to provide an overall assessment of controls in place to efficiently administer the EUTF's plan designs.

- **Electronic Review** of all claims (100%) processed within the audit period should explore system capabilities and the accuracy of plan set-up. Queries shall include, but may not be limited to:
    - Member eligibility for the date of service(s)
    - Potential duplication of payments
    - Reimbursement of expenses excluded or limited by plan design
    - Appropriate patient cost-shares (i.e., copayment, deductible, coinsurance)
    - Consistency in coordination of benefits, including subrogation and workers' compensation
- A **Target Claims Selection** shall validate the electronic query results.
- A **Statistically Valid Claim Sample** shall present a 95% confidence level that the audit findings are a true representation of how all claims were processed within the audit period. The proposal shall clearly indicate the confidence parameters and application to financial and/or incidence reporting. Each statistical claim sample shall be reviewed from receipt through each step of processing to verify:
    - Provider submissions included necessary documentation to support the claim
    - Claims were paid in strict accordance with Plan provisions
    - Established administrative procedures were followed and within industry guidelines
    - Claims were paid only for eligible individuals

- Claims that required review, including pre-certification and utilization review for example, received appropriate evaluation
- Third party recovery procedures, including coordination of benefits with Medicare and other group plans, were followed in accordance with plan provisions and standard insurance industry protocols
- Amounts paid were within contracted or non-contracted allowances
- Benefits were paid under the proper benefit classification, diagnostic, and procedure codes
- Benefit limitations, deductibles, copays, coinsurance, and out-of-pocket maximums were properly applied
- Requests for additional information were appropriate and did not result in unnecessary processing delays
- Arithmetic calculations were correct and payments were made to the proper party
- Duplicate claims have been properly denied

Your proposal should clearly indicate the total number of claims to be sampled, with an estimate for the number to be represented in the statistical and target selections.

For planning purposes, see Attachment 6 for a summary of each carrier's audit policies. Royal State will support a pure electronic audit; however, HMSA and Kaiser require a statistical component.

Category 3 & 4 - Dental and Vision Plan Audits shall consist of an electronic review of all claims and a review of operational procedures to provide an overall assessment of controls in place to efficiently administer the EUTF's plan designs.

- **Electronic Review** of all claims (100%) processed within the audit period should explore system capabilities and the accuracy of plan set-up. Queries should include, but may not be limited to:
  - Member eligibility for the date of service(s)
  - Potential duplication of payments
  - Reimbursement of expenses excluded or limited by plan design
  - Appropriate patient cost-shares (i.e., copayment, deductible, coinsurance)
  - Consistency in coordination of benefits, including subrogation and workers' compensation
- A **Target Claims Selection** shall validate the electronic query results. Your proposal should clearly identify the total number of claims to be sampled, and the claim attributes subject to onsite review (i.e., single issue or comprehensive analysis from receipt to benefit determination).

For planning purposes, HDS allows no more than 100 claims per calendar year across all plans and VSP limits the claims sample to 75 claims per plan. See Attachment 6 for further detail.

Category 5 - Life Insurance Audits shall consist of an electronic review of all claims and review of operational procedures to provide an overall assessment of controls in place to efficiently administer the EUTF's plan designs.

For planning purposes, the Royal State operational review will be limited to tasks directly impacting benefit determinations (i.e., the review of staffing functions is not required; eligibility, investigations, and quality controls are relevant).

SECTION V

OFFEROR INFORMATION SHEET

Organization Name: _____

Contact Person's Name Title: _____

Address: _____

_____

Phone Number: _____

E-mail Address: _____

Fax Number: _____

Recent Public Sector Clients Similar in Size and Project Scope		
Client Name	**Type of Plan(s) Audited**	**Contract Start Date**
Recent Non-Public Sector Clients Similar in Size and Project Scope		

Questionnaire Instructions to OFFERORS:

*****DO NOT ALTER THE QUESTIONS OR QUESTION NUMBERING*****

- Please complete all appropriate sections of the questionnaire.
- **Provide answers to the questionnaires in Word format.**
- Provide an answer to each question even if the answer is "not applicable" or "unknown."
- Answer the question as concisely as possible.
  - If the question asks "How many..." provide a number.
  - If the question asks, "Do you..." indicate Yes or No followed by any additional **brief** narrative explanation to clarify.
- **IMPORTANT: Be concise in your response.**
  - Use bullet points as appropriate.
  - Reconsider how to word any response that exceeds 200 words in length so that the response contains the **most important points** you want displayed in the evaluation of responses.
  - Referring the reader to attachment for further information should be avoided or used on a limited basis.
  - Any response that does not directly address the question, but only contains marketing information will be considered non-responsive.
- OFFEROR will be held accountable for accuracy/validity of all answers.
- RFP responses will become part of the contract between the winning OFFEROR and the EUTF.
- The submission of your proposal will be deemed a certification that you will comply with all requirements set forth in this RFP. If you are submitting a proposal for multiple plan audits, it will be assumed that all answers will apply equally to all options. If this is not the case, separate answers should be provided for each option.

NOTE: Answers to the questions must be provided in hard copy and WORD format on CD - DO NOT PDF or otherwise protect the CD

The following questions are designed to provide information to evaluate the OFFEROR's capabilities since the decision to award a contract will not be based solely on cost. Be concise with your response, which should begin with the most important points you want the Evaluation Committee to read. Where information is requested specific to an audit category, you must provide a response for each category; "same as __" may be used where the information is identical to a prior category response.

A. General Company Information

A-1. Identify your organization's company name, legal address, and headquarters address.

A-2. State the name and address of the person authorized to make decisions and represent the company in connection with this RFP. Include the name, title, mailing address, telephone number, and e-mail address.

A-3. State if your firm has operated under a different name within the past 10 years and provide that name that your firm previously operated under.

A-4. Include a general organizational chart that gives an overview of all organizational units. Also provide a separate organizational chart(s) for the unit(s) responsible for conducting auditing services.

A-5. Identify the name, title, address, telephone number, and email address for the contact person authorized to negotiate and execute a contract resulting from this RFP process.

A-6. Provide a brief summary of products and services offered by your firm.

A-7. Within the last three years, has your firm completed or is it in discussion of any mergers or acquisitions of other organizations. If yes, provide a brief explanation.

A-8. Describe the company ownership. Include information regarding any entity with more than a 10% ownership interest; specify <u>any</u> third party administrator (TPA) or related entity that has any ownership interest.

A-9. Identify whether your firm currently performs any work for, provides services to, or receives compensation from any TPA or related entity identified in this RFP.

A-10. Disclose fully any litigation instituted within the last five (5) years that involves your firm, any employee, any subsidiary or parent organization that directly affects or involves your firm's auditing unit, noting in particular litigation involving the EUTF, any EUTF agencies or any health plan vendors that provide services to the EUTF.

A-11. Disclose any current project responsibilities that may present a conflict of interest including other EUTF projects.

A-12. Provide one copy of the organization's most recent audited financial statements in a sealed envelope.

B. Benefit Plan Audit Experience

B-1. How long has your company been in business?

B-2. How many years has your firm been conducting independent audits?

1. Prescription Drug
2. Medical
3. Dental
4. Vision
5. Life Insurance

B-3. Describe the primary location(s) of the audit staff and IT resources that will be performing the audit. Indicate city and state.

1. Prescription Drug
2. Medical
3. Dental
4. Vision
5. Life Insurance

B-4. Will any subcontractors be used to complete this project? If so, please identify the subcontractor and its role. Subcontractor must provide detailed responses to the questionnaire as related to the services they will provide.

1. Prescription Drug
2. Medical
3. Dental
4. Vision
5. Life Insurance

B-5. How many audits similar in scope to the services required by this RFP did your firm conduct during calendar year 2015?

1. Prescription Drug
2. Medical

3. Dental

4. Vision

5. Life Insurance

B-6. Provide the number of 2016 audits completed or currently underway.

1. Prescription Drug

2. Medical

3. Dental

4. Vision

5. Life Insurance

B-7. Describe any significant actions taken or pending against your company or any entities of your company by clients that contested the results of your findings. Include separate information related to any subcontractor engagement.

1. Prescription Drug

2. Medical

3. Dental

4. Vision

5. Life Insurance

B-8. Has your firm ever been prevented by a vendor from performing a client's audit? If yes, describe the circumstances.

1. Prescription Drug

2. Medical

3. Dental

4. Vision

5. Life Insurance

B-9. Briefly describe any aspects of your audit process that are unique to your firm and that distinguish you from your competitors.

1. Prescription Drug

2. Medical

3. Dental

4. Vision

5. Life Insurance

B-10. Identify any restrictions you believe the vendor may present in completion of the scope of services defined in this RFP.

1. Prescription Drug

2. Medical

3. Dental

4. Vision

5. Life Insurance

C. Project Team

C-1. Identify a single contact that will serve as project manager to whom the EUTF would contact to resolve any audit issues, respond to inquiries, etc. Provide their name and contact information.

C-2. Identify each supervisory individual who will be assigned to this project, along with his or her designated areas of responsibility. This person may be expected to serve as the technical contact to whom the EUTF may contact.

1. Prescription Drug

2.a Medical, HMSA

2.b Medical, Kaiser

2.c Medical, Royal State (chiropractic and supplemental medical & prescription drugs)

3. Dental

4. Vision

5. Life

C-3. What is the average years of industry experience of the audit team and individuals who will be assigned to the audit?

1. Prescription Drug

2.a Medical, HMSA

2.b Medical, Kaiser

2.c Medical, Royal State (chiropractic and supplemental medical & prescription drugs)

3. Dental

4. Vision

5. Life

C-4. Indicate the use of any subcontracted personnel.

1. Prescription Drug

2.a Medical, HMSA

2.b Medical, Kaiser

2.c Medical, Royal State (chiropractic and supplemental medical & prescription drugs)

3. Dental

4. Vision

5. Life

C-5. Identify all professional staff that will be responsible for the EUTF's account and their areas of responsibility. As an attachment, provide a resume for each team member that includes their name, title, task assignment, office of origin, education, professional expertise, number of years with your firm, and experience related to their assigned role.

D. PROJECT MANAGEMENT

D-1. How long after being awarded this business would your organization be ready to conduct a kick-off meeting with EUTF representatives?

D-2. Explain how you will establish coherent guidelines that will ensure consistency of techniques, methodology used, and standardization of operations for all audits.

D-3. How will the EUTF remain informed on your progress with each audit?

D-4. The EUTF anticipates an in-person discussion for each audit report; fee is to be included in the cost proposal. Who will present the audit reports to the EUTF?

1. Prescription Drug

2. Medical

3. Dental

4. Vision

5. Life Insurance

D-5. Include a timeline demonstrating the first audit period of this proposed contract; display targeted dates for delivery of the preliminary draft reports to EUTF and the anticipated date(s) for their review comments and/or discussion. The timeline should assume notice of award on August 23, 2016.

E. Data Security

E-1. Do you have a Social Security number privacy policy in place?

E-2. Describe the type of encryption, security and privacy procedures utilized by your firm when handling protected health information.

E-3. What specific safeguards does the company have in place to prevent theft of confidential participant information?

F. Operational Review

F-1. Provide an overview of your operational review process (limit one page). Further detail is required in response to the following questions.

F-2. Confirm the proposed services will address the review components identified in the RFP Audit Scope. Identify any tasks not included and provide a brief explanation with your reason; include any variations between benefit categories.

F-3. Describe how you propose to evaluate vendor staffing levels and experience of staff assigned to the EUTF's account.

1. Prescription Drug

2. Medical

3. Dental

4. Vision

5. Life Insurance

F-4. How will you determine that adequate training procedures are used by the vendors to ensure that recently hired personnel are adequately trained in administrative procedures, claims processing and maintaining confidentiality?

1. Prescription Drug

2. Medical

3. Dental

4. Vision

5. Life Insurance

F-5. If your audit uncovers claims administration weaknesses, how are these discussed with the vendor prior to inclusion in your final report?

1. Prescription Drug

2. Medical

3. Dental

4. Vision

5. Life Insurance

F-6. How will you determine and report on claims complaint activity reported/maintained by vendors?

1. Prescription Drug

2. Medical

3. Dental

4. Vision

5. Life Insurance

F-7. How will your review of coordination of benefits (COB) look separately at primary and secondary insurance coverage responsibility? How will you evaluate the processing methodology used by the vendor (i.e., pay and pursue vs. pursue and pay)?

1. Prescription Drug

2. Medical

3. Dental

4. Vision

5. Life Insurance

F-8. How will you report on the vendor's subrogation opportunities pursued, recovered or lost? If this service is outsourced by the vendor, will you request documentation to support the outcome of individual cases?

1. Prescription Drug
2. Medical
3. Dental
4. Vision
5. Life Insurance

F-9. How will you determine that the vendors have an adequate system to identify potential areas of claim abuse such as fraudulent claims, duplicate claims, overcharging by providers, unnecessary physician services, etc.?

1. Prescription Drug
2. Medical
3. Dental
4. Vision
5. Life Insurance

F-10. How will you determine and document that appropriate administrative procedures are followed by the vendor to ensure compliance with contractual obligations?

1. Prescription Drug
2. Medical
3. Dental
4. Vision
5. Life Insurance

F-11. How will you assess and document claims payment and claims appeals turn-around time to ensure that standards are strictly enforced for both?

1. Prescription Drug
2. Medical
3. Dental

4. Vision

5. Life Insurance

F-12. How will you review and report on security breaches identified by the benefit contractor/carrier during the audit period?

1. Prescription Drug

2. Medical

3. Dental

4. Vision

5. Life Insurance

F-13. Briefly identify any modifications in your proposed review elements to those listed in the Scope of Work defined in Section IV of this RFP.

1. Prescription Drug

2. Medical

3. Dental

4. Vision

5. Life Insurance

G. Prescription Drug Audits (Caremark and SilverScript)

Responses to the following questions should clearly explain if the validation steps will include a sample or 100% electronic review of all transactions. Identify the sample size where appropriate.

G-1. Provide an overview of your proposed prescription drug review process (limit one page). Further detail is required in response to the following questions.

G-2. Identify the number of audits your firm has conducted during calendar years 2014 and 2015 with:

a. Caremark

b. SilverScript

G-3. Do your auditors maintain any medical licensure/credentials that enhance their qualifications to conduct a prescription drug audit?

G-4. Confirm the prescription drug audit includes electronic testing of 100% of all claims processed for each of the following. Provide an explanation if the proposal does not test 100% or does not perform the stated task.

a. patient eligibility on the date of service(s)

b. independent verification of average wholesale price (AWP)

c. comparison of actual aggregate claim discounts, and dispensing fees to contractual guarantees

d. comparison of actual claim adjudication to plan design and benefit rules

e. member cost share

f. duplicate claims

g. coverage rules

h. identification of contractual term improvement opportunities

i. consistency in coordination of benefits, including subrogation and workers' compensation

G-5. Confirm the prescription rebate audit includes the following. Provide an explanation if the proposal does not test 100% or does not perform the stated task.

a. identification of all rebatable claims and identification of categories properly excluded from rebates, according to the PBM contract

b. verification of earned rebates by quarter by NDC

c. comparison of earned rebates file to manufacturer rebate submission file

d. onsite review of applicable manufacturer contracts to verify all rebate amounts due are properly paid to the EUTF

e. comparison of PBM receipts from manufacturers to earned rebate file

f. comparison of actual rebates to contractual guarantees

G-6. How long (e.g., week, months, etc.) do you anticipate the audit will require from release of your data request to the date a final report is presented to the EUTF?

G-7. Identify any obstacles you anticipate will be presented by Caremark/SilverScript in allowing your firm to provide the services defined in the EUTF's Scope of Work.

G-8. What is your process for reconciling issues identified with the vendor?

G-9. What steps will your auditors take to minimize disruption and reduce the impact of the audit on plan administrators and their staff?

G-10. How will your auditors resolve problems/discrepancies that may occur during the audit (i.e., interpersonal problems or interpretation of contractual obligations)?

G-11. If your audit uncovers claims administration weaknesses, are these discussed with the vendor prior to inclusion in your final report?

G-12. Explain how your auditors emphasize and/or report on areas, which if changed or corrected, could result in cost savings to the program.

G-13. How will you verify the validity of any processing errors discovered during an electronic review of claims?

G-14. What method will you use to review EUTF subscriber eligibility? Will your review include a sample or conduct a comprehensive review of all enrollees?

G-15. Explain how your auditors will assess the retail claims adjudication system used by the PBM (including coding accuracy, etc.), and related performance guarantees.

G-16. Describe the steps your auditors will take to confirm that the PBM's claim payment system permits and correctly applies multi-tiered co-pays (including the assessment of co-pays for brand name drugs when generic drugs are available) and co-pays assessed to participants.

G-17. How will you evaluate the utilization of formulary?

G-18. How will your auditors review and assess the quality of Drug Utilization Review (DUR) services (prospective, concurrent and retrospective) provided by the PBM or its subcontractor?

G-19. How will your auditors report any weaknesses of DUR and provide recommendations for improvement?

G-20. How will your auditors assess that the EUTF is receiving maximum rebates negotiated by the PBM with manufacturers?

G-21. What is your process for reconciling issues identified with the PBM?

G-22. How will you assess how well the PBM’s manual systems are integrated with their automated systems?

G-23. Has CVS/Caremark provided you with access and support for an onsite rebate audit? Identify any obstacles you may have encountered or anticipate in relation to the EUTF plan reviews.

G-24. What is the date of your most recent onsite rebate audit at a CVS facility?

H. MEDICAL AUDITS (INCLUDES CHIROPRACTIC, SUPPLEMENTAL, DENTAL, VISION, & LIFE)

Responses to the following questions should clearly explain if the validation steps will include a sample or 100% review of all claims. Identify the sample size and any vendor variations where appropriate.

H-1. Provide an overview of your proposed claims review process (limit one page per type of benefit). Distinguish modifications due to administrative contractor and/or benefit plan.

H-2. Identify the number of audits your firm conducted during calendar years 2014 and 2015 with:

a. HMSA

b. Kaiser

c. Royal State

d. HDS Dental

e. VSP

f. USAble Life

H-3. Will your staff be assigned to work sequentially or concurrently?

H-4. Do you anticipate overlapping work assignments in order to meet the EUTF's deadline?

H-5. How long (e.g., weeks, months) will it take your staff to complete each of the audits requested?

a. HMSA

b. Kaiser

c. Royal State

d. HDS Dental

e. VSP

f. USAble Life

H-6. What is your process for reconciling issues identified with the vendor?

H-7. What steps will your auditors take to minimize disruption and reduce the impact of the audit on plan administrators and their staff?

H-8. How will your auditors resolve problems/discrepancies that may occur during the audit (i.e., interpersonal problems or interpretation of contractual obligations)?

H-9. If your audit uncovers claims administration weaknesses, how are these discussed with the vendor prior to inclusion in your final report?

H-10. Explain how your auditors emphasize and/or report on areas, which if changed or corrected, could result in cost savings to the program.

H-11. Confirm the claims audit will include electronic testing of 100% of all claims processed for each of the following. Provide an explanation if the proposal does not electronically test 100% of claims or does not perform the stated task.

a. patient eligibility on the date of service(s)

b. potential duplication of payments

c. reimbursement of expenses excluded or limited by plan design

d. appropriate patient cost-shares (i.e., copayment, deductible, coinsurance)

e. consistency in coordination of benefits, including subrogation and workers' compensation

H-12. How will you verify the validity of any processing errors discovered during an electronic review of claims?

H-13. State the stratified selection methodology and minimum sample size to be surveyed for measurement of overall administrative performance to achieve the required 95% confidence, and whether confidence is projected for incidence and/or financial accuracy.

a. HMSA

b. Kaiser

c. Royal State

H-14. Provide an overview of the process you propose to insure compliance with performance guarantees and to identify/determine appropriate damage assessments. Identify the total sample size and any applicable split between target and statistical random selections.

H-15. Confirm each sampled claim will be reviewed for the administrative components outlined in the Scope of Work (Section IV). Provide an explanation if a stated task(s) is not proposed for all claims and distinguish counts accordingly.

H-16. Indicate how your process defines errors; explain any weighting. Will your definition be consistent with that used in the administrator's established guarantees?

H-17. Provide your definition of payment and non-financial errors with mention of any overlap in classification of procedural errors and payment errors.

H-18. How will you evaluate the automated system used to process/pay claims? How will you assess any systems that are not automated?

H-19. How will you assess how well manual systems are integrated with automated systems?

H-20. How will you assess system edits, linkages among systems and the frequency and level of manual intervention by administrators/staff?

I. MEDICAL AUDITS – HMSA AND KAISER

I-1. Will you determine if pre-certification for out-of-network admissions has been obtained by the vendors prior to benefit determination?

I-2. How will you confirm that vendors subscribe to appropriately established reasonable and customary fee criteria?

I-3. Describe your methodology for evaluating that DRGs are grouped correctly.

I-4. Describe how you will assess plan cost savings (hospital audits, large case management).

I-5. How will you confirm accuracy of the total amount of "out-of-pocket expenses" paid by enrollees separate and/or apart from the required co-pays based on plan provisions for the date of service?

I-6. How will you confirm that benefit accumulations are accurately maintained on-line?

I-7. How will you assess denied/pending claims (e.g., request for additional information, medical peer review, external audit/investigation)?

I-8. Describe your methodology for reporting on claims backlog and its effect, if any, on the claims adjudication process.

I-9. How will you identify claims processing problems or areas in need of further audit?

I-10. Describe how you will report on overpayment by type (hospital, provider, member), the total amount of refund dollars collected by the vendor, reasons for overpayment and recommended methods for reducing overpayment.

I-11. How will you determine and document if an adequate system of reviews is used when problem claims are encountered from either subscribers or providers?

I-12. What steps will you take to review, evaluate and report on the accuracy and efficiency of the claim submission process (including electronic data interface between hospitals, providers and vendors?

I-13. How do you review surgical services including claims paid for related/unrelated surgeries and bundling and unbundling of procedures?

FEE PROPOSAL

The EUTF reserves the right to reject any and all proposals, to waive any informalities or irregularities in the proposals received, and to award by item or total or any combination of proposals deemed most favorable to the EUTF.

Proposals are requested on an all-inclusive rate, which shall remain fixed for the period of the contract.

All costs must be included on these sheets in order to be reimbursed. For proposals that include the use of subcontractors, subcontractor personnel and costs shall also be calculated as part of the OFFEROR's total cost.

J. FEE PROPOSAL

J-1. Confirm your fees are presented on an "all inclusive" basis, including travel expenses and an in-person report presentation.

J-2. Confirm your understanding that the EUTF may alter the audit schedule (i.e., skip or combine years); therefore, the auditor must prepare an audit schedule for each year and submit for EUTF's approval before work commences.

J-3. Confirm your fee will remain valid 90 days from the proposal due date.

J-4. Ten percent (10%) of your fees will be subject to Performance Guarantees that will be negotiated and agreed upon prior to contract award. Indicate the percent you are willing to put at risk for the following categories:

a. Continuity in project manager and lead technical personnel.

b. Updates to the EUTF at least every two weeks.

c. EUTF Administrator satisfaction rating to encompass ease in contract execution, implementation, ability to maintain the project timeline, and content of the written report (e.g., clarity, non-technical explanation of findings, appropriate recommendations).

J-5. Confirm your understanding that if the EUTF does not respond to your Performance Guarantees before the award of the contract, the EUTF does not infer or imply acceptance by the EUTF. The EUTF reserves the right to negotiate both financial and non-financial performance guarantees with the selected vendor.

FEE PROPOSAL FORM

RFP-16-001, Benefit Plan Audit Services
STATE OF HAWAII, DEPARTMENT OF BUDGET AND FINANCE
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND (EUTF)

The proposed fee shall include all labor, materials, supplies, equipment, insurance to provide the services as outlined, travel expenses, and any other miscellaneous expenses involved in providing the services required under this RFP.

The following fee proposal includes the services described in Section IV. The following pages detail the costs for the individual review components for each benefit plan audit requested under this RFP.

Category [1]	Period 1 [2]	Period 2	Period 3	Period 4	Period 5
1. Pharmacy		NA	NA	NA	NA
2. Medical [3]					
3. Dental					NA
4. Vision					NA
5. Life					
Total Annual Fee					
Indicate percentage discount if more than one audit engagement is awarded[4]					

[1] OFFEROR acknowledges that a change in health plan contractors may be made during any audit contract period and such change will not result in modification to the proposed fee without prior agreement with the EUTF regarding revisions to the scope of services.

[2] The EUTF anticipates annual audits, however, reserves the option to forego a subsequent review period or combine two periods into a single audit year at its discretion.

[3] Medical includes the chiropractic and supplemental benefit plans.

[4] OFFEROR may specify a percentage discount for award of more than one audit engagement. OFFEROR shall specify the number or specific audit engagements for the percentage discount to be applicable.

Firm Name: _____

Address of Firm: _____

Telephone: _____Fax:_____

Signature: _____

Name & Title of Signer: _____

E-mail Address: _____

The following chart identifies the anticipated audit schedule throughout the 5-year contract term; EUTF reserves the right to modify the scope and frequency of each audit.

OFFEROR shall detail the breakdown of fees for each individual review component although the total fee may be lower to realize cost efficiencies between review components. EUTF reserves the right to have one or more review components selected for audit. EUTF anticipates this chart will provide an indication of modifications that may be determined appropriate to the respective audits.

Category 1 - Prescription Drug Plans

Pharmacy - Caremark	Period 1
Audit Periods Active Retiree Under 65	 7/2013-6/2015 7/2013-12/2014
Operational	
Eligibility Comparison	
Plan Design Audit	
Rebate Audit	
Performance Guarantees	
Total Annual Fee	

Pharmacy - SilverScript	Period 1
Audit Periods Retiree Over 65	 7/2013-12/2014
Operational	
Eligibility Comparison	
Plan Design Audit	
Rebate Audit	
Performance Guarantees	
Total Annual Fee	

Category 2 Medical Plans (including Chiropractic and Supplemental)

Medical - HMSA	Period 1	Period 2	Period 3	Period 4	Period 5
Audit Periods Active Retirees	7/2013-6/2015 1/2014-12/2014	7/2015-6/2016 1/2015-12/2015	7/2016-6/2017 1/2016-12/2016	7/2017-6/2018 1/2017-12/2017	7/2018-6/2019 1/2018-12/2018
Operational					
Eligibility Comparison					
Electronic 100% Audit					
Statistical Audit					
Performance Guarantees					
Total Annual Fee					

Medical – Kaiser	Period 1	Period 2	Period 3	Period 4
Audit Periods Active Retirees	7/2015-6/2016 1/2015-12/2015	7/2016-6/2017 1/2016-12/2016	7/2017-6/2018 1/2017-12/2017	7/2018-6/2019 1/2018-12/2018
Operational				
Eligibility Comparison				
Electronic 100% Audit				
Statistical Audit				
Performance Guarantees				
Total Annual Fee				

Supplemental Medical and Prescription Drug – Royal State	Period 1	Period 2	Period 3	Period 4
Audit Periods Active Retirees	7/2015-6/2016 1/2015-12/2015	7/2016-6/2017 1/2016-12/2016	7/2017-6/2018 1/2017-12/2017	7/2018-6/2019 1/2018-12/2018
Operational				
Eligibility Comparison				
Electronic 100% Audit				
Performance Guarantees				
Total Annual Fee				

Chiropractic – Royal State	Period 1	Period 2	Period 3	Period 4	Period 5
Audit Periods Active Retirees	7/2013-6/2015 1/2014-12/2014	7/2015-6/2016 1/2015-12/2015	7/2016-6/2017 1/2016-12/2016	7/2017-6/2018 1/2017-12/2017	7/2018-6/2019 1/2018-12/2018
Operational					
Eligibility Comparison					
Electronic 100% Audit					
Performance Guarantees					
Total Annual Fee					

Category 3 - Dental

Dental - HDS	Period 1	Period 2	Period 3	Period 4
Audit Periods Active Retirees	7/2015-6/2016 1/2015-12/2015	7/2016-6/2017 1/2016-12/2016	7/2017-6/2018 1/2017-12/2017	7/2018-6/2019 1/2018-12/2018
Operational				
Eligibility Comparison				
Electronic 100% Audit				
Performance Guarantees				
Total Annual Fee				

Category 4 - Vision

Vision - VSP	Period 1	Period 2	Period 3	Period 4
Audit Periods Active Retirees	7/2015-6/2016 1/2015-12/2015	7/2016-6/2017 1/2016-12/2016	7/2017-6/2018 1/2017-12/2017	7/2018-6/2019 1/2018-12/2018
Operational				
Eligibility Comparison				
Electronic 100% Audit				
Performance Guarantees				
Total Annual Fee				

Category 5 - Life

Life – Royal State	Period 1
Audit Periods Active Retirees	7/2013-6/2015 1/2013-12/2014
Eligibility Comparison	
Electronic 100% Audit	
Total Annual Fee	

Life - USAble	Period 2	Period 3	Period 4	Period 5
Audit Periods Active Retirees	7/2015-6/2016 1/2015-12/2015	7/2016-6/2017 1/2016-12/2016	7/2017-6/2018 1/2017-12/2017	7/2018-6/2019 1/2018-12/2018
Operational				
Eligibility Comparison				
Electronic 100% Audit				
Performance Guarantees				
Total Annual Fee				

ATTACHMENTS AND EXHIBITS

ATTACHMENTS:

1. OFFER FORM OF-1
2. REGISTRATION FORM
3. EXCEPTIONS
4. CONFIDENTIAL INFORMATION
5. CARRIER PERFORMANCE GUARANTEES
6. CARRIER AUDIT POLICIES
7. REFERENCE INFORMATION QUESTIONNAIRE

EXHIBITS:

A. AUDIT SCHEDULE

B. BENEFIT PLAN MEMBERSHIP & EXPENSES

C. CONTRACT FORM AND GENERAL CONDITIONS

D. BUSINESS ASSOCIATE AGREEMENT

ATTACHMENT 1 - OFFER FORM OF-1

RFP-16-001, Benefit Plan Audit Services
STATE OF HAWAII, DEPARTMENT OF BUDGET AND FINANCE
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND (EUTF)

Procurement Officer
Department of Budget and Finance/EUTF
Honolulu, Hawaii 96813

Dear Procurement Officer:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications and Special Provisions attached hereto, and in the General Conditions, by reference made a part hereof and available upon request; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

OFFEROR is:

___ Sole Proprietor ___ Partnership ___ Joint Venture ___ Other_____

_____

___ *Corporation *State of incorporation: _____

Hawaii General Excise Tax License I.D. No. _____

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:

Date:_____ **(x)**_____
Authorized (Original) Signature

E-mail Address:_____ _____
Name and Title (Please Type or Print)

Telephone No.:_____ Fax No.: _____

Exact Name of OFFEROR**: _____

******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 2 - REGISTRATION FORM

RFP-16-001, Benefit Plan Audit Services
STATE OF HAWAII, DEPARTMENT OF BUDGET AND FINANCE
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND (EUTF)

Email or fax this Registration Form by June 14, 20216 to:

Mr. Derek M. Mizuno, Procurement Officer
Hawaii Employer-Union Health Benefits Trust Fund
Email: eutfadmin@hawaii.gov
Fax: (808) 586-2320

Company Name: _____

Address: _____

City, State, Zip: _____

Name contact person: _____

Contact's title: _____

Phone: _____ Fax: _____

Email: _____

ATTACHMENT 3 - EXCEPTIONS

RFP-16-001, Benefit Plan Audit Services
STATE OF HAWAII, DEPARTMENT OF BUDGET AND FINANCE
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND (EUTF)

Should OFFEROR take any exception to the terms, conditions, specifications, or other requirements listed in the RFP, OFFEROR shall list such exceptions in the space below. OFFEROR shall reference the RFP section where exception is taken, a description of the exception taken, and the proposed alternative, if any. The State reserves the right to accept or reject any request for exceptions.

ATTACHMENT 4 – CONFIDENTIAL INFORMATION

RFP-16-001, Benefit Plan Audit Services
STATE OF HAWAII, DEPARTMENT OF BUDGET AND FINANCE
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND (EUTF)

List all information believed to be confidential and not to be disclosed to the public. Identify the page numbers and sections in the proposal where the information is located.

Include one signed hard unbound copy which redacts any propriety, confidential, and trade secret information in the form of marked out pages (blanked out) of the master proposal for submission to the public under any request compliant with the public information laws of the State.

ATTACHMENT 5 – CARRIER PERFORMANCE GUARANTEES

RFP-16-001, Benefit Plan Audit Services
STATE OF HAWAII, DEPARTMENT OF BUDGET AND FINANCE
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND (EUTF)

The following performance guarantees represent sample terms that may vary during each audit period. Copies of the specific guarantees for each audit period will be provided to the successful OFFEROR.

Prescription Drug (effective May 1, 2012 through June 30, 2015)

1. Clean implementation—No system errors, ID card delays, and the EUTF has online access to all tools prior to effective date

2. Implementation timeline—Implementation team will be assigned and introduced to EUTF at least 6 months in advance of effective date

3. Implementation team—Implementation team enrollees will not change, unless requested by EUTF, and will be responsible for the accurate installation of all administrative, clinical and financial parameters for EUTF's program

4. Implementation satisfaction scorecard—Assigned account executive will work with EUTF prior to the start of implementation to agree on terms of a satisfaction scorecard to be issued to client after effective date for completion

5. Financial accuracy—Percentage of claim payments made without error relative to the total dollars paid will be at least 99%

6. Mail service non-financial accuracy—The mail service pharmacy shall guarantee dispensing accuracy of at least 99.995%

7. System downtime—At least 99.5% access to its systems by all the retail pharmacies in PBM's network 24 hours a day, 7 days a week, 365 days a year

8. Claims eligibility data—Eligibility loads not to exceed 24 hours after receipt

9. Eligibility data error reporting—Eligibility file error reporting on all eligibility file updates will be provided to the client within 2 business days

10. Invoicing errors—All invoicing errors will be credits back to the client by next billing cycle or PBM will pay interest

11. Client approval of enrollee communications—100% of all enrollee communications will be approved by the EUTF – exceptions for drug recalls and urgent patient safety communications

12. Delivery of standard reports—Within 30 days of end of reporting quarter

13. Pharmacy audit resolution—48 hours after receipt of cleans Rx claim

14. PBM account teams performance—The EUTF may assess a penalty in the amount of $30,000 per contract year if, after the first contract year and each successive contract year, the EUTF's benefits staff do not rate PBM account team's performance for such contract year an average of 3 or better on a scale of 1 to 5 (5 being the best based on a range of performance criteria agreed to between the EUTF and PBM at the beginning of such contract year)

15. Account management and turnover—Account team enrollees will remain constant for at least the first 18 months of the contract period, unless a change is requested by the EUTF

16. Mail turnaround—Prescriptions not requiring intervention—95% of prescriptions dispensed within an average of 2 business days and 100% within an average of 3 business days

17. Mail turnaround—Prescriptions requiring intervention—95% of prescriptions dispensed within an average of 4 business days and 100% within an average of 5 business days

18. Mailing enrollee materials—All applicable enrollee materials will be mailed at least 10 days prior to the effective date and will be 100% accurate

19. Phone average speed of answer—100% of calls to client-specific toll free line shall be answered within 20 seconds (excluding IVR)

20. Phone abandonment rate—100% of calls to EUTF specific toll free line shall be answered with an abandonment rate of 3% or less

21. Written inquiry answer time—95% of inquiries responded to in 5 business days. 100% within 20 business days.

22. Enrollee satisfaction survey—The PBM agrees to conduct an enrollee satisfaction survey each contract year and that the satisfaction rate will be 90% or greater. A penalty of $30,000 per contract year may be assessed against the PBM for failure to meet this standard.

23. Issue resolution—Verbal inquiries—PBM will resolve 99% of all telephone issues at the first point of contact

24. Issue resolution—Written inquiries—PBM will resolve enrollee issues within 72 business hours any case that required the involvement of EUTF's staff due to incorrect or incomplete information being provided by the PBM. If not resolved within 72 hours, a penalty will be applied per case, up to an annual maximum

Medical, Dental, Vision, Life (effective January 1, 2012 through June 30, 2015)

1. Achieve a minimum of 99% financial accuracy

2. Process 99% of claims within 30 calendar days

3. Answer 90% of calls within 30 seconds

4. Respond to 95% of written inquiries within 20 calendar days

5. Resolve 95% of telephone inquiries within 1 calendar day

6. Maintain an average speed of answer of 30 seconds or less

7. Maintain call abandonment rate below 5%

8. Respond to 95% of trustee, Administrator, and professional inquiries within 10 calendar days

9. Process 99% of appeals within 60 calendar days

10. Process 99% of claims within 30 calendar days

11. Achieve 99% financial accuracy

12. Achieve 95% coding accuracy

13. Achieve a minimum of 90% satisfaction on annual surveys

14. Issue ID Cards within 15 calendar days

15. Maintain network turnover below 5%

16. Achieve 90% overall satisfaction with health plan

17. Exceed state average for asthma management

Medical, Dental, Vision, Life (effective January 1, 2015 through June 30, 2018)

1. **Call center response:** a) Answer 100% of calls within 20 seconds (not including calls answered by an automated voice response system); b) Resolve 99% of telephone inquiries/issues of all telephone inquiries/issues at the first point of contact (the number of telephone inquiries/issues completely resolved at the time of initial contact divided by the total number of calls); and c) Maintain call abandonment rate below 3%.

2. **Claim processing and claim service**: a) Achieve a minimum of 99% financial accuracy on claim payment; b) Achieve 95% of coding accuracy; c) Process 99% of claims within 30 calendar days; d) Resolve 98% of written inquires within 10 business days of receipt of inquiry; and e) Process 99% of appeals within 30 calendar days (first level).

3. **Wellness and total health management**: a) Develop and present to the EUTF for adoption a proposed comprehensive wellness and disease management program within 6 months of commencement of contract; b) Monitor compliance with and outcomes of wellness and total health management programs and report quarterly to EUTF administration and Board; c) Provide web based wellness and participant education

material and capability by beginning of first plan year; d) Provide web based health risk assessment facility for participants within 4 months of contact effective date; and e) Report to EUTF on results of health risk assessment results quarterly.

4. **EUTF Trustee and EUTF Administration Service**: a) Resolve 95% of enrollee issues within 3 business days, any case that required the involvement of EUTF's staff due to incorrect or incomplete information being provided by the Contractor; b) Respond to 95% of Trustee, Administrator and EUTF staff inquires within the same business day, or the next business day if the inquiry is made after 3:00 PM, HST; c) Provide required monthly reports within the prescribed time for Board meeting; and d) Maintain consistent, local primary account team throughout each contract term unless change requested by EUTF.

5. **Plan administration**: a) Weekly 834 file loads not to exceed 24 hours after receipt and all transactions (enrollments, terminations, life event, other changes), including mailing of ID cards, processed within 48 hours; b) Process eligibility, termination, life events, and other changes within 99% accuracy; and Maintain network turnover below 5%.

6. **Participant service**: a) Contractor agrees to conduct an enrollee satisfaction survey for each contract year and that the satisfaction rate must be 90% or greater. "Enrollee Satisfaction Rate" means (i) the number of eligible persons responding to contractor's annual standard patient satisfaction survey as being satisfied with the overall performance under the integrated program divided by (ii) the number of eligible persons responding to such annual patient satisfaction survey; EUTF must provide timely approvals and responses, and a minimum of 20% of surveys must be returned for the performance standard to be applicable. b) Provide accurate communication to participants 100% of the time, including ID cards. Letters pre-approved by EUTF prior to mailing.

ATTACHMENT 6 – CARRIER AUDIT POLICIES

RFP-16-001, Benefit Plan Audit Services
STATE OF HAWAII, DEPARTMENT OF BUDGET AND FINANCE
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND (EUTF)

EUTF anticipates each benefit plan carrier will provide a copy of their SOC-1 report and responses to supplemental questions specific to their administration of the State's benefit plans.

The following information provides minimum details required to refine the OFFERORS recommended scope of service for each benefit plan audit; however, carrier audit policies and contractual audit provisions are subject to modification without prior notice.

HMSA

- 90 days advance notice is required for the onsite arrival (30 days to prepare the data file and receipt of the sample 60 days prior)
- Will allow for simultaneous review of two years.
- Onsites not available in the months of January, April, July, or October
- Sample limited to 200 claims per onsite visit; onsite validation required
- Claims data will exclude sensitive conditions (e.g., HIV, Mental Health, Substance Abuse)
- 30 days is required for review of a draft report
- A maximum of three auditors will be provided claim images and system inquiry access
- Onsite entrance and exit conferences are required

Kaiser

- A minimum of one-month notice is required in advance of the onsite audit.
- A new claims system was implemented in December 2014; different file formats exist
- A week is required to prepare each data file requested (2 weeks if the audit covers process dates before and after December 2014)
- A maximum of two auditors will be provided claim images and system access for 2015 and later; paper documents will be gathered for prior years (requires a month to collect)
- Responses to onsite questions should follow within a week of the audit ending; 2 weeks is required to review and comment on the draft report
- Onsite entrance and exit conferences are required

Hawaii Dental Service

- A minimum of one-month notice is required in advance of the onsite audit.
- HDS will provide data for any claim up to three years after it was paid; older dates will be discussed
- Preparation of a data file requires a minimum 15 days. Two standard data layouts will be provided: (1) "claim listing for sample" from which auditors may select their sample, and (2) "claim listing with detail" which is provided once the sample is selected.
- Sample size is limited to 100 claims per calendar year across all plans
- An onsite visit is not required by HDS policy; they will review and respond to sample questions
- A maximum of three auditors will be provided claim images but no system access
- Responses to onsite questions should follow within 15 days of the audit ending; 30 days is required to review and comment on the draft report
- Onsite entrance and exit conferences are required

VSP Vision Care

- VSP allows for one audit annually with 60 days notice for a mail-in audit or 90 days advance notice for an onsite visit
- 10 days is required to prepare the data file and 14 days for every 100 files sampled
- Two years can be audited simultaneously, however, eligibility information is only retained for 13 months following a member's termination date
- Sample size for the annual audit is up to 75 for the active plan and 75 for the retiree plan
- Claim documentation will be provided in hard copy format; no system access
- VSP requests a conference call at the onset of the audit to set expectations

Royal State

- Minimum 60 days advance notice is required for the onsite arrival (30 days to prepare the data file and receipt of the sample 60 days prior)
- Will allow for simultaneous review of two years.
- Onsites restrictions vary by benefit:
    - Chiropractic - not available the last week of each month, and the months of August , September, and December

- Supplemental Health – not available March to mid-May and the months of September, October, and November

- The data file for selection contains summary EOB Payment information; additional fees may be charged for modification or creation of a new layout (e.g., $500-$1,000 for the chiropractic report and $22.50 per hour for Supplemental Health modifications)
- 30 days is required for review of a draft report
- A maximum of two auditors will be provided claim images; no system access
- Onsite entrance and exit conferences are required

USAble Life

- Minimum 90 days advance notice is required for the onsite arrival
- Will allow for simultaneous review of two years; able to accommodate one audit in a year to include both the Active and Retiree plans
- Onsites preference for second or third quarters of the calendar year
- Will support 5% sample of total paid claims by plan
- The data file layout contains information required in an audit from State Insurance Division audits as well as other Blue' plans; additional requests will not be supported
- Medical information including all diagnosis codes will not be available
- 90 days is required for review of a draft report
- A maximum of three auditors will be provided claim images on the system
- Onsite entrance and exit conferences are required

ATTACHMENT 7 - REFERENCE INFORMATION QUESTIONNAIRE

RFP-16-001, Benefit Plan Audit Services
STATE OF HAWAII, DEPARTMENT OF BUDGET AND FINANCE
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND (EUTF)

Instructions for Reference Information Questionnaire

OFFEROR shall provide to the State a completed reference information questionnaire to be completed by at least three client references for which it has provided auditing services within the past 5 years.

The references shall be provided to the State in the form of questionnaires that have been fully completed by the individual providing the reference. The State has included the reference check questionnaire to be used, as RFP Attachment 7. **THE OFFEROR MUST USE THIS FORM, OR AN EXACT DUPLICATE THEREOF.**

The OFFEROR will be solely responsible for obtaining the fully completed reference information questionnaires, and for including them with the OFFEROR's sealed Proposal. In order to obtain and submit the completed reference check questionnaire, the OFFEROR shall exactly follow the process detailed below:

1. OFFEROR makes an exact duplicate (paper or Word electronic document) of the State's form, as it appears in RFP Attachment 7.

2. OFFEROR sends the copy of the form to the reference it has chosen, along with a new, standard #10 envelope that is capable of being sealed.

3. OFFEROR directs the individual providing the reference to complete the form in its entirety, sign and date it, and seal it within the provided envelope. The individual may prepare a manual document or complete the exact duplicate Word document and print the completed copy for submission. After sealing the envelope, the individual providing the reference <u>must sign his or her name in ink across the sealed portion of the envelope</u> and return it directly to the OFFEROR. The OFFEROR will give the reference check provider a deadline, such that the OFFEROR will be able to collect all references in time to include them with its sealed Proposal.

4. When the OFFEROR receives the sealed envelopes from the reference check providers, the OFFEROR <u>will not</u> open them. Instead, the OFFEROR will enclose all of the unopened reference check envelopes in an easily identifiable larger envelope, and will include this envelope for submission with the written Proposal. Therefore, when the State opens the box containing the proposals, the State will find a clearly labeled envelope enclosed, which contains all of the sealed reference check envelopes.

The State will base its reference check evaluation on the contents of these envelopes. <u>THE STATE WILL NOT ACCEPT LATE REFERENCES OR REFERENCES SUBMITTED THROUGH ANY OTHER CHANNEL OF SUBMISSION OR MEDIUM, WHETHER WRITTEN, ELECTRONIC, VERBAL, OR OTHERWISE.</u>

REFERENCE INFORMATION QUESTIONNAIRE

RFP-16-001, Benefit Plan Audit Services
STATE OF HAWAII, DEPARTMENT OF BUDGET AND FINANCE
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND (EUTF)

THIS SECTION TO BE COMPLETED BY OFFEROR	
OFFEROR'S NAME:	
DATES SERVICES RENDERED BY OFFEROR:	FROM TO
NAME OF PRIMARY AUDITOR:	

THIS SECTION TO BE COMPLETED BY REFERENCE	
REFERENCE NAME (CLIENT ORGANIZATION):	
NUMBER OF EMPLOYEES COVERED UNDER YOUR BENEFIT PLANS:	
NUMBER OF RETIREES COVERED UNDER YOUR BENEFIT PLANS:	
INDIVIDUAL RESPONDING TO REQUEST FOR INFORMATION:	
INDIVIDUAL'S TITLE TITLE:	
INDIVIDUAL'S TELEPHONE NUMBER:	
DATE REFERENCE QUESTIONNAIRE COMPLETED:	

1. Was the audit completed within the time frame indicated in the contract?

2. Was the audit completed within the dollar amount agreed to between you and the vendor?

3. Was the pricing a fixed amount or some other arrangement?

4. Was a written report provided? If so, was it comprehensive?

5. Were there any follow-up audits conducted to verify the corrections to any errors?

6. On a scale of 1-10, (10 = outstanding), how would you rate the OFFEROR's:
   a. Thoroughness and professionalism _____
   b. Accessibility to you when you needed them _____
   c. Primary auditor _____
   d. Overall satisfaction with the vendor _____
7. If you were the sole decision-maker, would you re-select this vendor to conduct your next audit?

ADDITIONAL COMMENTS (OPTIONAL)

EXHIBIT A
AUDIT SCHEDULE

The anticipated audit schedules to be used by the OFFEROR in preparing their proposal, scope of services, timelines, and fee projections is presented in Section VII. EUTF reserves the right to discuss and modify the schedule in advance of the auditor's commencement of each audit period.

EXHIBIT B - ACTIVES

BENEFIT PLAN MEMBERSHIP AND EXPENSES

Active employee plans are on a July 1 to June 30 fiscal year. The average covered lives and total plan expenditures for the Fiscal Year ending June 2015 follows.

1. Prescription Drugs (ASO - Excludes Kaiser)	Caremark Rx	
EUTF Active PPO	31,272	$64,991,129
EUTF Active HMO	2,676	$5,612,101
HSTA VB Active (HMSA PPO)	5,803	$12,508,951
Note: Active and Retiree Under 65 benefits are provided through Caremark; Retiree Over 65 benefits are offered through SilverScript.		

2a. Medical Coverage (Fully Insured)	HMSA	
EUTF Active PPO 90/10	7,041	$57,886,379
EUTF Active PPO 80/20	22,903	$155,955,081
EUTF Active PPO 75/25	1,328	$4,602,651
EUTF Active HMO	2,676	$22,901,270
HSTA VB Active PPO 90/10	2,125	$15,415,931
HSTA VB Active PPO 80/20	3,678	$23,756,304

2b. Medical Coverage (Fully Insured)	Kaiser	
EUTF Active Standard (includes prescription drugs)	3,976	$20,717,495
EUTF Active Comprehensive (includes prescription drugs)	7,050	$65,817,276
HSTA VB Active (includes prescription drugs)	1,300	$12,314,862

2c. Chiropractic & Supplemental Benefits (Fully Insured)	Royal State	
EUTF Active Chiropractic	44,995	$960,811
EUTF Active Medical & Prescription Drug Supplemental	644	$346,075
HSTA VB Active Chiropractic	6,950	$161,416

3. Dental (Fully Insured)	HDS Dental	
EUTF Active	49,579	$31,082,418
HSTA VB Active	7,454	$5,544,229
HSTA VB Active Supplemental	199	$97,508

4. Vision (Fully Insured)	VSP	
EUTF Active	43,966	$4,260,124
HSTA VB Active	10,169	$1,150,644

5. Life (Fully Insured)	Royal State	
EUTF Active (1)	59,501	$2,371,990
HSTA VB Active (1)	8,988	$266,310

(1) Contract terminated June 30, 2015; transferred to USAble effective July 1, 2015.

EXHIBIT B - RETIREES

BENEFIT PLAN MEMBERSHIP AND EXPENSES

The Retiree Plans are on a calendar year basis. The following represents the average covered lives and total plan expenditures for the period January 1, 2014 through December 31, 2014.

1. Prescription Drugs (ASO - Excludes Kaiser)	Caremark/SilverScript	
EUTF Retiree Under 65	6,000	$23,526,804
EUTF Retiree Over 65 (EGWP)	26,904	$59,051,821
HSTA VB Retiree Under 65	429	$1,993,154
HSTA VB Retiree Over 65 (EGWP)	1,783	$4,595,311
Note: Active and Retiree Under 65 benefits are provided through Caremark; Retiree Over 65 benefits are offered through SilverScript.		

2a. Medical Coverage (Fully Insured)	HMSA	
EUTF Retiree Under 65 PPO (90/10)	6,000	$45,718,442
EUTF Retiree Over 65 PPO	26,904	$68,447,188
HSTA VB Retiree Under 65 PPO (90/10)	429	$2,468,942
HSTA VB Retiree Over 65 PPO	1,783	$3,701,460

2b. Medical Coverage (Fully Insured)	Kaiser	
EUTF Retiree Under 65 (includes prescription drugs)	1,131	$13,997,243
HSTA VB Retiree Under 65 (includes prescription drugs)	40	$257,947

2c. Chiropractic Supplemental (Fully Insured)	Royal State	
HSTA VB Retiree Chiropractic	2,442	$55,246

3. Dental (Fully Insured)	HDS Dental	
EUTF Retiree	39,886	$19,454,239
HSTA VB Retiree	2,440	$1,527,601

4. Vision (Fully Insured)	VSP	
ALL Retirees (includes HSTA VB)	42,892	$3,122,550

5. Life (Fully Insured)	Royal State	
EUTF Retiree (2)	36,406	$1,563,333
HSTA VB Retiree (2)	2,501	$24,012

(2) Contract terminated December 31, 2014; transferred to USAble effective January 1, 2015.

STATE OF HAWAII

CONTRACT FOR GOODS OR SERVICES BASED UPON COMPETITIVE SEALED PROPOSALS

This Contract, executed on the respective dates indicated below, is effective as of _____, _____, between _____,
(Insert name of state department, agency, board or commission)
State of Hawaii ("STATE"), by its _____,
(Insert title of person signing for State)
(hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")), whose address is _____
_____ and _____
("CONTRACTOR"), a _____
(Insert corporation, partnership, joint venture, sole proprietorship. or other legal form of the Contractor)
under the laws of the State of _____, whose business address and federal and state taxpayer identification numbers are as follows: _____
_____

RECITALS

A. The STATE desires to retain and engage the CONTRACTOR to provide the goods or services, or both, described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said goods or services or both.

B. The STATE has issued a request for competitive sealed proposals, and has received and reviewed proposals submitted in response to the request.

C. The solicitation for proposals and the selection of the CONTRACTOR were made in accordance with section 103D-303, Hawaii Revised Statutes ("HRS"), Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Subtitle 11 ("HAR"), Chapter 122, Subchapter 6, and applicable procedures established by the appropriate Chief Procurement Officer ("CPO").

D. The CONTRACTOR has been identified as the responsible and responsive offeror whose proposal is the most advantageous for the STATE, taking into consideration price and the evaluation factors set forth in the request.

E. Pursuant to _____, the STATE
(Legal authority to enter into this Contract)
is authorized to enter into this Contract.

F. Money is available to fund this Contract pursuant to:
(1) _____
(Identify state sources)
or (2) _____
(Identify federal sources)
or both, in the following amounts: State $ _____
Federal $ _____

NOW, THEREFORE, in consideration of the promises contained in this Contract, 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 goods or services, or both, set forth in the request for competitive sealed proposals number _____ ("RFP") and the CONTRACTOR'S accepted proposal ("Proposal"), both of which, even if not physically attached to this Contract, are made a part of this Contract.

2. Compensation. The CONTRACTOR shall be compensated for goods supplied

or services performed, or both, under this Contract in a total amount not to exceed _____ DOLLARS ($ _____), including approved costs incurred and taxes, at the time and in the manner set forth in the RFP and CONTRACTOR'S Proposal.

3. Time of Performance. The services or goods required of the CONTRACTOR under this Contract shall be performed and completed in accordance with the Time of Performance set forth in Attachment-S3, which is made a part of this Contract.

4. Bonds. The CONTRACTOR ☐ is required to provide or ☐ is not required to provide: ☐ a performance bond, ☐ a payment bond, ☐ a performance and payment bond in the amount of _____ DOLLARS ($ _____).

5. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR is attached to and made a part of this Contract.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made a part of this Contract. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. In the event of a conflict among the documents, the order of precedence shall be as follows: (1) this Contract, including all attachments and addenda; (2) the RFP, including all attachments and addenda; and (3) the Proposal.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of _____ DOLLARS ($ _____) per day, in accordance with the terms of paragraph 9 of the General Conditions.

8. Notices. Any written notice required to be given by a party to this Contract 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 HOPA'S address indicated in the Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address indicated in the Contract. 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.

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

STATE

_____
(Signature)

_____
(Print Name)

_____
(Print Title)

_____
(Date)

CONTRACTOR

CORPORATE SEAL
(If available)

_____
(Name of Contractor)

_____
(Signature)

_____
(Print Name)

_____ *
(Print Title)

_____
(Date)

APPROVED AS TO FORM:

_____
Deputy Attorney General

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

STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF _____)
) **SS.**
_____ **COUNTY OF** _____)

On this _____ day of _____, _____ before me appeared _____ and _____, to me known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are _____ and _____ 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 Stamp or Seal)

_____
(Signature)

_____
(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ _____ Circuit

Doc. Description: _____

_____

_____

(Notary Stamp or Seal)

_____
Notary Signature Date

NOTARY CERTIFICATION

STATE OF HAWAII

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 _____, 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), HRS).
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), HRS).
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), HRS).
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. (Sections 84-18(b) and (c), HRS).

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.

* Reminder to Agency: If the "is" block is checked and if the Contract involves goods or services of a value in excess of $10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, the Agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).

CONTRACTOR

By _____
(Signature)

Print Name _____

Print Title _____

Name of Contractor _____

Date _____

Attachment - S1

STATE OF HAWAII

SCOPE OF SERVICES

Attachment – S2

STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

Attachment – S3

STATE OF HAWAII

TIME OF PERFORMANCE

Attachment – S4

STATE OF HAWAII

CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development ("DHRD").*

Pursuant to a delegation of the authority by the Director of DHRD, 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 (HRS).

(Signature) (Date)

(Print Name)

(Print Title)

* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly 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. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

(1) It involves the delivery of completed work or product by or during a specific time;
(2) There is no employee-employer relationship; and
(3) The authorized funding for the service is from other than the "A" or personal services cost element.

NOTE: Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and
76-16(b)(12) 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, HRS.

(Signature) (Date)

(Print Name)

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

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 section103D-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.

BUSINESS ASSOCIATE AGREEMENT

This Agreement, is effective as of _____, between the Hawai‘i Employer-Union Health Benefits Trust Fund, State of Hawai‘i (hereinafter the “STATE”), by its Administrator, whose address is 201 Merchant Street, Suite 1700, Honolulu, Hawai‘i 96813, and _____(hereinafter “BUSINESS ASSOCIATE”), a _____, whose business address is as follows: _____.

RECITALS

A. The STATE has entered into a contract with BUSINESS ASSOCIATE and/or procured the following goods and services from BUSINESS ASSOCIATE: _____

B. BUSINESS ASSOCIATE’s contract and/or provision of goods and performance of services may require that: (1) Protected Health Information (defined below) or Electronic Protected Health Information (defined below) be disclosed to or used by BUSINESS ASSOCIATE; (2) BUSINESS ASSOCIATE create, receive, maintain or transmit Protected Health Information or Electronic Protected Health Information on behalf of the STATE; and/or (3) BUSINESS ASSOCIATE be provided or have access to Personal Information (defined below).

C. Both parties are committed to complying with the Privacy and Security Laws (defined below) with respect to Protected Health Information, Electronic Protected Health Information, and Personal Information.

D. This Agreement sets forth the terms and conditions pursuant to which the following will be handled: (1) Protected Health Information and Electronic Protected Health Information that is disclosed to or used by BUSINESS ASSOCIATE by virtue of its contract with the STATE and/or its provision of goods and services to or for the STATE; (2) Protected Health Information and Electronic Protected Health Information that is created, received, maintained or transmitted by BUSINESS ASSOCIATE on behalf of the STATE; and (3) Personal Information provided to BUSINESS ASSOCIATE or to which BUSINESS ASSOCIATE will have access by virtue of a contract with the STATE.

TERMS AND CONDITIONS

1. Introduction: The STATE, as defined in this Agreement, has determined that it is a Covered Entity or a Health Care Component of a Covered Entity under HIPAA (defined below) and the Privacy and Security Rules (defined below). In addition, the STATE is subject to use and disclosure restrictions regarding Personal Information under Act 10 (defined below) and Chapters 487N and 487R, Hawai‘i Revised Statutes.

The parties acknowledge that entry into this Agreement is necessary and desirable in order to: (a) protect the privacy and security of Protected Health Information and Electronic Protected Health Information in accordance with the Privacy and Security Laws and because BUSINESS ASSOCIATE is a "business associate" of the STATE as that term is used in 45 Code of Federal Regulations ("C.F.R.") § 160.103; and (b) protect against the unauthorized use and disclosure of Personal Information that BUSINESS ASSOCIATE has been provided or to which BUSINESS ASSOCIATE has access by virtue of a contract with the STATE.

2. Definitions:

a. Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in the Privacy and Security Laws.

b. Act 10. "Act 10" shall mean Act 10, 2008 Session Laws of Hawai‘i, Special Session.

c. Agreement. "Agreement" shall mean this agreement between STATE and BUSINESS ASSOCIATE and any and all attachments, exhibits and special conditions attached hereto.

d. ARRA. "ARRA" shall mean the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, and the rules and regulations promulgated under the ARRA.

e. Breach. "Breach" shall have the meaning set forth in the ARRA.

f. De-identified Information. "De-identified Information" shall have the meaning set forth in 45 C.F.R. §§ 164.514(a)-(b).

g. Electronic Protected Health Information. "Electronic Protected Health Information" shall have the meaning set forth in 45 C.F.R. § 160.103. For purposes of this Agreement, "Electronic Protected Health Information" is limited to Electronic Protected Health Information that is: (i) disclosed to or used by BUSINESS ASSOCIATE by virtue of its contract with the STATE and/or its provision of goods and services to or for the STATE; and/or (ii) created, received, maintained, or transmitted by BUSINESS ASSOCIATE on behalf of the STATE.

h. Electronic Transactions Rule. "Electronic Transactions Rule" shall mean the final rule set forth in 45 C.F.R. §§ 160 and 162.

i. HIPAA. "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

j. Individual. "Individual" means the person who is the subject of Protected Health Information, and shall include a person who qualifies as a personal representative under 45 C.F.R. § 164.502(g).

k. Individually Identifiable Health Information. "Individually Identifiable Health Information" shall have the meaning set forth in 45 C.F.R. § 160.103.

l. Personal Information. "Personal Information" shall have the meaning set forth in Section 487N-1, Hawai‘i Revised Statutes. For purposes of this Agreement,

"Personal Information" is limited to Personal Information provided to BUSINESS ASSOCIATE or to which BUSINESS ASSOCIATE has access by virtue of a contract with the STATE.

m. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E, as the same may be amended from time to time.

n. Privacy and Security Laws. "Privacy and Security Laws" shall include: (1) the provisions of HIPAA that relate to the privacy and security of Protected Health Information and Electronic Protected Health Information; (2) the Privacy and Security Rules; (3) the provisions of ARRA, including the rules and regulations promulgated under the ARRA, that relate to the privacy and security of Protected Health Information and Electronic Protected Health Information; (4) Act 10 and, to the extent applicable, Chapters 487N and 487R, Hawai‘i Revised Statutes; and (5) other Federal and State privacy or security statutes and regulations that apply to Protected Health Information, Electronic Protected Health Information, or Personal Information.

o. Protected Health Information. "Protected Health Information" shall have the meaning set forth in 45 C.F.R. § 160.103. For purposes of this Agreement, "Protected Health Information" is limited to Protected Health Information that is: (i) disclosed to or used by BUSINESS ASSOCIATE by virtue of its contract with the STATE and/or its provision of goods and services to or for the STATE; and/or (ii) created, received, maintained, or transmitted by BUSINESS ASSOCIATE on behalf of the STATE.

p. Secretary. "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or designee.

q. Security Rule. "Security Rule" shall mean the Health Insurance Reform: Security Standards at 45 C.F.R. Part 160, Part 162, and Part 164, Subparts A and C, as the same may be amended from time to time.

r. Unsecured Protected Health Information. "Unsecured Protected Health Information" shall have the meaning set forth in the ARRA.

3. Obligations and Activities of BUSINESS ASSOCIATE

a. BUSINESS ASSOCIATE agrees to not use or disclose Protected Health Information, Electronic Protected Health Information, and Personal Information other than as permitted or required by this Agreement or as Required By Law.

b. BUSINESS ASSOCIATE agrees to use appropriate safeguards to prevent use or disclosure of Protected Health Information, Electronic Protected Health Information, and Personal Information other than as provided for by this Agreement.

c. BUSINESS ASSOCIATE agrees to implement administrative, physical, and technical safeguards (as those terms are defined in the Security Rule) that reasonably and appropriately protect the confidentiality, integrity and availability

of Electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of the STATE. Without limiting the foregoing, BUSINESS ASSOCIATE agrees to implement administrative, physical, and technical safeguards to comply with 45 C.F.R. §§ 164.308, 164.310, and 164.312, as and to the extent that such is required of business associates under the Privacy and Security Laws (as amended by the ARRA).

(i) Required Safeguards. BUSINESS ASSOCIATE shall use all appropriate safeguards to prevent use or disclosure of Protected Health Information received from, or created or received on behalf of, STATE, other than as provided for in this Agreement or as required by law. These safeguards will include, but are not limited to:

(I) Training. Providing annual training to relevant employees, contractors, and subcontractors on how to prevent the improper use or disclosure of Protected Health Information; and updating and repeating training on a regular basis;

(II) Administrative Safeguards. Adopting policies and procedures regarding the safeguarding of Protected Health Information; and Enforcing those policies and procedures, including sanctions for anyone not found in compliance;

(III) Technical and Physical Safeguards. Implementing appropriate technical safeguards to protect Protected Health Information, including access controls, authentication, and transmission security; and implementing appropriate physical safeguards to protect Protection Health Information, including workstation security and device and media controls.

d. In accordance with Part V of Act 10, BUSINESS ASSOCIATE agrees to implement: (i) technological safeguards to reduce exposure to unauthorized access to Personal Information, (ii) mandatory training on security awareness topics relating to Personal Information protection for BUSINESS ASSOCIATE's employees, and (iii) confidentiality agreements to be signed by BUSINESS ASSOCIATE's employees. BUSINESS ASSOCIATE further agrees to safeguard Protected Health Information, Electronic Protected Health Information, and Personal Information in accordance with any rules, policies, procedures and directions adopted or implemented by STATE to the extent that such are communicated to BUSINESS ASSOCIATE.

e. BUSINESS ASSOCIATE agrees to ensure that any agent (including a contractor or subcontractor) to whom it provides Protected Health Information, Electronic Protected Health Information, or Personal Information agrees to the same restrictions and conditions that apply to BUSINESS ASSOCIATE with respect to such information under this Agreement and the Privacy and Security Laws. BUSINESS ASSOCIATE further agrees to ensure that any such agent shall safeguard such Protected Health Information, Electronic Protected Health Information, and Personal Information in accordance with any rules, policies,

procedures and directions adopted or implemented by STATE to the extent that such are communicated to BUSINESS ASSOCIATE. BUSINESS ASSOCIATE agrees to ensure that any such agent shall implement reasonable and appropriate safeguards to protect Protected Health Information.

f. BUSINESS ASSOCIATE agrees to implement reasonable policies and procedures to comply with 45 C.F.R. § 164.316, as and to the extent that such is required of business associates under the Privacy and Security Laws (as amended by the ARRA).

g. BUSINESS ASSOCIATE agrees to provide access to Protected Health Information in the Designated Record Set to STATE or, as directed by STATE, to an Individual to the extent and in the manner required by 45 C.F.R. § 164.524.

h. BUSINESS ASSOCIATE agrees to make Protected Health Information available for amendment and to incorporate any amendments to Protected Health Information that the STATE directs or agrees to in accordance with the requirements of 45 C.F.R. § 164.526.

i. BUSINESS ASSOCIATE agrees to document disclosures of Protected Health Information, disclosures of Electronic Protected Health Information and information related to such disclosures as would be required for STATE to respond to a request by an Individual for an accounting of disclosures of: (1) Protected Health Information in accordance with 45 C.F.R. § 164.528; and (2) Electronic Protected Health Information in accordance Section 13405(c) of the ARRA. BUSINESS ASSOCIATE further agrees to collect and provide to STATE, any and all information that is reasonably necessary for STATE to timely respond to such requests by an Individual for an accounting of disclosures.

j. BUSINESS ASSOCIATE agrees to keep a log of Breaches of Unsecured Protected Health Information in such form and with such information as to enable the STATE to comply with Section 13402(e)(3) of the ARRA and the rules and regulations promulgated under ARRA.

k. BUSINESS ASSOCIATE agrees to keep a complete log of disclosures made of Personal Information in accordance with Section 8(b)(6) of Act 10.

l. BUSINESS ASSOCIATE agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of Protected Health Information and Electronic Protected Health Information available to STATE and/or to the Secretary, at reasonable times and places or as designated by the STATE and/or the Secretary, for purposes of determining compliance with the Privacy and Security Laws. BUSINESS ASSOCIATE further agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of Personal Information available to STATE, at reasonable times and places or as designated by the STATE, for purposes of determining compliance with this Agreement, Act 10, and other Federal and State laws regarding the use and disclosure of Personal Information.

m. BUSINESS ASSOCIATE agrees to report to STATE any disclosure or use of Protected Health Information not provided for by this Agreement, of which BUSINESS ASSOCIATE becomes aware, but in no event later than five (5) business days of first learning of any such use or disclosure. BUSINESS ASSOCIATE further agrees to report to STATE any security incidents that are required to be reported by or to the STATE under 45 C.F.R. Part 164, particularly 45 C.F.R. § 164.314. BUSINESS ASSOCIATE agrees that if any of its employees, agents, subcontractors, and/or representatives use and/or disclose Protected Health Information received from, or created or received on behalf of, STATE, or any derivative De-identified Information in a manner not provided for in this Agreement, BUSINESS ASSOCIATE shall ensure that such employees, agents, subcontractors, and/or representatives shall receive training on BUSINESS ASSOCIATE's procedures for compliance with the Privacy Rule, or shall be sanctioned or prevented from accessing any Protected Health Information BUSINESS ASSOCIATE receives from, or creates or receives on behalf of, STATE. Continued use of Protected Health Information in a manner contrary to the terms of this Agreement shall constitute a material breach of this Agreement.

n. If there is a Breach of Unsecured Protected Health Information, BUSINESS ASSOCIATE shall: (i) notify the STATE in writing of the Breach no later than twenty (20) calendar days after BUSINESS ASSOCIATE's discovery of the Breach; (ii) investigate and report to STATE on the causes of the Breach, including without limitation, any steps that BUSINESS ASSOCIATE will take to mitigate the Breach and prevent the occurrence of future similar Breaches; (iii) in consultation with STATE, provide all notifications regarding the Breach that STATE and/or BUSINESS ASSOCIATE are required to make under ARRA, including without limitation, written notices to individuals, notices to the media, and notices to the Secretary or any other governmental entity, all such notices to be made in accordance with all ARRA requirements; (iv) unless the Breach is primarily caused by the negligence or other fault of the STATE, indemnify and hold STATE harmless from all claims, lawsuits, administrative proceedings, judgments, damages, liabilities, penalties, and costs arising from the Breach, including all costs of investigating the Breach, providing all required notices, and otherwise complying with all ARRA requirements; and (v) provide a log of all Breaches of Unsecured Protected Health Information to the STATE no later than twenty (20) calendar days after the end of each calendar year, which log shall include all information that STATE needs in order to comply with Section 13402(e)(3) of the ARRA.

o. If there is a "security breach" regarding Personal Information as that term is defined in Section 487N-1, Hawai‘i Revised Statutes, BUSINESS ASSOCIATE shall: (i) notify the STATE in writing of the security breach no later than twenty (20) calendar days after BUSINESS ASSOCIATE's discovery of the security breach; (ii) investigate and report to STATE on the causes of the security breach, including without limitation, any steps that BUSINESS ASSOCIATE will take to mitigate the Breach and prevent the occurrence of future similar Breaches; (iii) in consultation with STATE, provide all notifications regarding the security breach that STATE and/or BUSINESS ASSOCIATE are required to make under Chapter 487N and other applicable Hawai‘i Revised Statutes; (iv) unless the security

breach is primarily caused by the negligence or other fault of the STATE, indemnify and hold STATE harmless from all claims, lawsuits, administrative proceedings, judgments, damages, liabilities, penalties, and costs arising from the security breach, including all costs of investigating the security breach, providing all required notices, and otherwise complying with Chapter 487N and other applicable Hawai‘i Revised Statutes; and (v) assist the State in providing any written report to the legislature or other government entities that is required by Chapter 478N and other applicable Hawai‘i Revised Statutes.

p. BUSINESS ASSOCIATE agrees to mitigate, to the extent practicable, any harmful effect that is known to BUSINESS ASSOCIATE of: (1) a security breach or disclosure or use of Protected Health Information, Electronic Protected Health Information, or Personal Information by BUSINESS ASSOCIATE in violation of the requirements of this Agreement; and/or (2) a Breach of Unsecured Protected Health Information by BUSINESS ASSOCIATE or any of its officers, employees, or agents (including contractors and subcontractors).

q. BUSINESS ASSOCIATE shall, upon notice from STATE, accommodate any restriction to the use or disclosure of Protected Health Information and any request for confidential communications to which STATE has agreed in accordance with the Privacy Rule.

r. BUSINESS ASSOCIATE shall comply with any other requirements of the Privacy Law, the Privacy Rule, the Security Law, and the Security Rule not expressly specified in this Agreement, as and to the extent that such requirements apply to business associates under the Privacy Law, the Privacy Rule, the Security Law, and the Security Rule, as they may be amended from time to time.

4. Permitted Uses and Disclosures by BUSINESS ASSOCIATE

a. General Use and Disclosure Provisions. Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may disclose or use Protected Health Information, Electronic Protected Health Information, and Personal Information to perform functions, activities, or services for, or on behalf of, STATE as specified in this Agreement, provided that such disclosure or use would not violate any Privacy and Security Laws if done by STATE.

b. Specific Use and Disclosure Provisions

(i) Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may use Protected Health Information and Personal Information for the proper management and administration of the BUSINESS ASSOCIATE or to carry out the legal responsibilities of the BUSINESS ASSOCIATE.

(ii) Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may disclose Protected Health Information for the proper management and administration of the BUSINESS ASSOCIATE, for disclosures that are Required By Law, or where BUSINESS ASSOCIATE obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required

By Law or for the purpose for which it was disclosed to the person and the person agrees to notify BUSINESS ASSOCIATE of any instances where the confidentiality of the information has been breached. Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may disclose Personal Information where such disclosure is permitted by applicable Federal or State laws.

(iii) Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may use Protected Health Information to provide Data Aggregation services to STATE as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(iv) BUSINESS ASSOCIATE may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

c. Further Uses Prohibited. Except as provided in sections 4.a and 4.b, above, BUSINESS ASSOCIATE is prohibited from further using or disclosing any information received from STATE, or from any other Business Associate of STATE, for any commercial purposes of BUSINESS ASSOCIATE, including, for example, "data mining".

5. Minimum Necessary. BUSINESS ASSOCIATE shall only request, use, and disclose the minimum amount of Protected Health Information necessary to accomplish the purpose of the request, use, or disclosure.

6. Prohibited, Unlawful, or Unauthorized Use and Disclosure of Protected Health Information. BUSINESS ASSOCIATE shall not use or further disclose any Protected Health Information received from, or created or received on behalf of, STATE, in a manner that would violate the requirements of the Privacy Rule, if done by STATE.

7. Indemnity by BUSINESS ASSOCIATE. BUSINESS ASSOCIATE shall defend, indemnify and hold harmless STATE and STATE'S officers, employees, and agents (including contractors and subcontractors) from and against any and all claims, demands, lawsuits, administrative or other proceedings, judgments, liabilities, damages, losses, fines, penalties, and costs, including reasonable attorneys' fees, that are caused by or arise out of a breach or failure to comply with any provision of this Agreement and/or by a violation of any provision of the Privacy and Security Laws, including the ARRA, by BUSINESS ASSOCIATE or any of BUSINESS ASSOCIATE's officers, employees, or agents (including contractors and subcontractors).

8. Permissible Requests by STATE. STATE shall not request BUSINESS ASSOCIATE to disclose or use Protected Health Information, Electronic Protected Health Information, or Personal Information in any manner that would not be permissible under the Privacy and Security Laws if done by STATE.

9. Standard Electronic Transactions. STATE and BUSINESS ASSOCIATE agree that BUSINESS ASSOCIATE shall, on behalf of STATE, transmit data for transactions that are required to be conducted in standardized format under the Electronic Transactions Rule. BUSINESS ASSOCIATE shall comply with the Electronic

Transactions Rule for all transactions conducted on behalf of STATE that are required to be in standardized format. BUSINESS ASSOCIATE shall ensure that any of its subcontractors to whom it delegates any of its duties under its contract with STATE, agrees to conduct and agrees to require its agents or subcontractors to comply with the Electronic Transactions Rule for all transactions conducted on behalf of STATE that are required to be in standardized format.

10. Termination for Cause. In addition to any other remedies provided for by this Agreement, upon STATE's knowledge of a material breach or violation by BUSINESS ASSOCIATE of the terms of this Agreement, STATE may either:

    a. Provide an opportunity for BUSINESS ASSOCIATE to cure the breach or end the violation, and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by the STATE; or

    b. Immediately terminate this Agreement if BUSINESS ASSOCIATE has breached or violated a material term of this Agreement and cure is not possible; and

    c. If neither termination nor cure is feasible, STATE shall report any violation of the federal Privacy and Security Rules to the Secretary.

11. Effect of Termination.

    a. Upon any termination of this Agreement, until notified otherwise by STATE, BUSINESS ASSOCIATE shall extend all protections, limitations, requirements, and other provisions of this Agreement to: (i) all Protected Health Information received from or on behalf of STATE or created or received by BUSINESS ASSOCIATE on behalf of STATE; (ii) all Electronic Protected Health Information created, received, maintained or transmitted by BUSINESS ASSOCIATE on behalf of STATE; and (iii) all Personal Information.

    b. Upon any termination of this Agreement, STATE shall determine whether it is feasible for BUSINESS ASSOCIATE to return to STATE or destroy all or any part of: (i) all Protected Health Information received from or on behalf of STATE or created or received by BUSINESS ASSOCIATE on behalf of STATE that BUSINESS ASSOCIATE maintains in any form and shall retain no copies of such information; (ii) all Electronic Protected Health Information created, received, maintained or transmitted by BUSINESS ASSOCIATE on behalf of STATE; and (iii) all Personal Information. In connection with the foregoing, upon any termination of the Agreement, BUSINESS ASSOCIATE shall notify the STATE in writing of any and all conditions that make return or destruction of such information not feasible and shall provide STATE with any requested information related to the STATE'S determination as to whether the return or destruction of such information is feasible.

    c. If STATE determines that return or destruction of all or any part of the Protected Health Information, Electronic Protected Health Information, and Personal Information is feasible, at STATE's option, BUSINESS ASSOCIATE shall return or destroy such information. If STATE directs that BUSINESS ASSOCIATE return or destroy all or any part of the Protected Health Information, Electronic

Protected Health Information, and Personal Information, it is understood and agreed that BUSINESS ASSOCIATE shall retain no copies of such information. Destruction of Personal Information shall be performed in accordance with Chapter 487R, Hawai‘i Revised Statutes. Notwithstanding the foregoing, BUSINESS ASSOCIATE shall not destroy any Protected Health Information in less than six (6) years from the date that it is received by BUSINESS ASSOCIATE.

d. If STATE determines that return or destruction of all or any part of the Protected Health Information, Electronic Protected Health Information, and Personal Information is not feasible or opts not to require the return or destruction of such information, BUSINESS ASSOCIATE shall extend the protections, limitations, requirements, and other provisions of this Agreement to such information for so long as BUSINESS ASSOCIATE maintains such information. STATE understands that BUSINESS ASSOCIATE’s need to maintain portions of the Protected Health Information in records of actuarial determinations and for other archival purposes related to memorializing advice provided, can render return or destruction infeasible.

e. The provisions of this Section 11 shall apply with respect to all terminations of this Agreement, for any reason whatsoever, and to any and all Protected Health Information, Electronic Protected Health Information, and Personal Information in the possession or control of any and all agents and subcontractors of BUSINESS ASSOCIATE.

12. Miscellaneous

a. Regulatory References. A reference in this Agreement to a section in the Privacy and Security Laws means the section in effect or as amended.

b. Amendment. BUSINESS ASSOCIATE and STATE agree to take all actions necessary to amend this Agreement in order for STATE to comply with the requirements of the Privacy Rule, Security Rule, HIPAA, ARRA, and/or any other Federal or State law that is determined to apply to the Protected Health Information, Electronic Protected Health Information, or Personal Information covered by this Agreement. All amendments shall be in writing and executed by both parties.

c. Survival. The respective rights and obligations of STATE and BUSINESS ASSOCIATE under Sections 3, 5, and 8 above, shall survive the termination of this Agreement.

d. Interpretation. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the Privacy and Security Laws, as amended, the Privacy and Security Laws shall control. Where provisions of this Agreement are different than those mandated in the Privacy or Security Laws, but are nonetheless permitted by the Privacy or Security Laws, the provisions of this Agreement shall control. Any ambiguity in this Agreement shall be resolved to permit STATE to comply with the Privacy and Security Laws.

e. Third Parties. This Agreement is solely between BUSINESS ASSOCIATE and the STATE, and may be enforced only by BUSINESS ASSOCIATE or the STATE. This Agreement shall not be deemed to create any rights in any third parties or to create any obligations or liabilities of BUSINESS ASSOCIATE or the STATE to any third party.

HAWAI'I EMPLOYER-UNION HEALTH BENEFITS TRUST FUND ("STATE")

By _____
Its Administrator

Date: _____, 2016

[*name of business associate*]
("BUSINESS ASSOCIATE")

By _____

Its _____

Date: _____, 2016

APPROVED AS TO FORM:

_____
Deputy Attorney General