Attachment C

Contract General Conditions

GOVERNING CONTRACTS WITH
THE JUDICIARY, STATE OF HAWAII
FOR HEALTH AND HUMAN SERVICES
(Pursuant to Chapter 103F, HRS)

January 2001

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STATE OF HAWAII FOR HEALTH AND HUMAN SERVICES
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1. Representations and Conditions Precedent

1.1 Agreement Subject to the Availability of State and Federal Funds.

1.1.1 State Funds. This Agreement is, at all times, subject to the appropriation of state funds, and may be terminated without liability to either the PROVIDER or the JUDICIARY in the event that state funds are not appropriated or available.

1.1.2 Federal Funds. To the extent that this Agreement is funded partly or wholly by federal funds, this Agreement is subject to the availability of such federal funds. The portion of this Agreement that is to be funded federally shall be deemed severable, and such federally funded portion may be terminated without liability to either the PROVIDER or the JUDICIARY in the event that federal funds are not available. In any case, this Agreement shall not be construed to obligate the JUDICIARY to expend JUDICIARY funds to cover any shortfall created by the unavailability of anticipated federal funds.

1.2 Representations of the PROVIDER As a necessary condition to the formation of this Agreement, the PROVIDER makes the representations contained in this paragraph, and the JUDICIARY relies upon such representations as a material inducement to entering into this Agreement.

1.2.1 Compliance with Laws. As of the date of this Agreement, the PROVIDER complies 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 PROVIDER's performance of this Agreement.

1.2.2 Licensing and Accreditation. As of the date of this Agreement, the PROVIDER holds all licenses and accreditations required under applicable federal, state, and county laws, ordinances, codes, and rules to provide the Required Services under this Agreement.

1.3 Compliance with Laws. The PROVIDER 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 PROVIDER's performance of this Agreement, including but not limited to the laws specifically enumerated in this paragraph.

1.3.1 Smoking Policy. The PROVIDER shall implement and maintain a written smoking policy as required by Chapter 328K, Hawaii Revised Statutes, or its successor provision.

1.3.2 Drug Free Work Place. The PROVIDER shall implement and maintain a drug free work place as required by the Drug Free Workplace Act of 1988, or its successor.

1.3.3 Persons with Disabilities. The PROVIDER shall implement and maintain all practices, policies, and procedures required by federal, state, or county law, including but not limited to the Americans with Disabilities Act (42 U.S.C. 12101, et seq.), and the Rehabilitation Act (20 U.S.C. 701, et seq.).

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

1.4 Insurance. The PROVIDER shall obtain, maintain, and keep in force throughout the period of this Agreement liability insurance (the "Liability Insurance") issued by an insurance company in a combined amount of at least ONE MILLION AND NO/100 DOLLARS ($1,000,000.00), or such lesser amount requested in writing by the PROVIDER and, for good cause shown, approved by the head of the purchasing agency, which approval, if any, is incorporated herein by reference, for bodily injury and property damage liability arising out of each occurrence. The Liability Insurance shall provide that it is the primary insurance for the JUDICIARY, the purchasing agency, and their officers, employees, and agents for any liability arising out of or resulting from occurrences connected with the PROVIDER's performance under this Agreement. Prior to or upon execution of this Agreement, the PROVIDER shall obtain a certificate of insurance verifying the existence of the necessary liability insurance coverage, including the coverage of the JUDICIARY, and its officers, employees, and agents. If the scheduled expiration date of the liability insurance policy is earlier than the expiration date of the time for performance under this Agreement, the PROVIDER, upon renewal of the policy, shall promptly cause to be provided to the JUDICIARY an updated certificate of insurance. The certificates of insurance shall expressly provide that the insurance policy shall not be canceled unless the insurance company has first given to the JUDICIARY thirty (30) calendar days' written notice of the intended cancellation.

1.5 Notice to Clients. Provided that the term of this Agreement is at least one year in duration, within ONE HUNDRED EIGHTY (180) days after the effective date of this Agreement, the PROVIDER shall create written procedures for the orderly termination of services to any clients receiving the Required Services under this Agreement, and for the transition to services supplied by another provider upon termination of this Agreement, regardless of the circumstances of such termination. These procedures shall include, at the minimum, timely notice to such clients of the termination of this Agreement, and appropriate counseling.

1.6 Reporting Requirements. The PROVIDER shall submit a Final Project Report to the JUDICIARY in the form specified in Exhibit "B" to this Agreement if applicable, or otherwise satisfactory to the JUDICIARY, documenting the PROVIDER's overall efforts toward meeting the requirements of this Agreement, and listing expenditures actually incurred in the performance of this Agreement. The PROVIDER shall return any unexpended funds to the JUDICIARY.

1.7 Conflicts of Interest. In addition to the Certification provided in Exhibit "C" to this Agreement, the PROVIDER represents that neither the PROVIDER, nor any employee or agent of the PROVIDER, 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 PROVIDER's performance under this Agreement.

2. Documents and Files

2.1 Confidentiality of Material.

2.1.1 All material given to or made available to the PROVIDER by virtue of this Agreement that is identified as proprietary or confidential information shall be safeguarded by the PROVIDER and shall not be disclosed to any individual or organization without the prior approval of the JUDICIARY.

2.1.2 All information, data, or other material provided by the PROVIDER to the JUDICIARY shall be subject to the Uniform Information Practices Act, Chapter 92F, HRS, or its successor, and any other applicable body of law concerning information practices or confidentiality.

2.2 Ownership Rights and Copyright. The JUDICIARY shall have complete ownership of all material, both finished and unfinished that is developed, prepared, assembled, or conceived by the PROVIDER pursuant to this Agreement, and all such material shall be considered "works made for hire". All such material shall be delivered to the JUDICIARY upon expiration or termination of this Agreement. The JUDICIARY, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the PROVIDER pursuant to this

Agreement.

2.3 Records Retention. The PROVIDER and any subcontractors shall maintain the books and records that relate to the Agreement, and any cost or pricing data for three (3) years from the date of final payment under the Agreement. In the event that any litigation, claim, investigation, audit, or other action involving the records retained under this provision arises, then such records shall be retained for three (3) years from the date of final payment, or the date of the resolution of the action, whichever occurs later. During the period that records are retained under this section, the PROVIDER and any subcontractors shall allow the JUDICIARY free and unrestricted access to such records.

3. Relationship between Parties

3.1 Coordination of Services by the JUDICIARY. The head of the purchasing agency, (which term includes the designee of the head of the purchasing agency), shall coordinate the services to be provided by the PROVIDER in order to complete the performance required in the Agreement. The PROVIDER shall maintain communications with the head of the purchasing agency at all stages of the PROVIDER's work, and submit to the head of the purchasing agency for resolution any questions which may arise as to the performance of this Agreement.

3.2 Subcontracts and Assignments. The PROVIDER may assign or subcontract any of the PROVIDER's duties, obligations, or interests under this Agreement, but only if (I) the PROVIDER obtains the prior written consent of the JUDICIARY and if (ii) the PROVIDER's assignee or subcontractor submits to the JUDICIARY a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the PROVIDER's assignee or subcontractor have been paid. Additionally, no assignment by the PROVIDER of the PROVIDER's right to compensation under this Agreement shall be effective unless and until the assignment is approved by the JUDICIARY.

3.3 Change of Name. When the PROVIDER asks to change the name in which it holds this Agreement with the JUDICIARY, 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 such as an amendment to this Agreement with the PROVIDER's articles of incorporation, enter into an amendment to this Agreement with the PROVIDER to effect the change of name. Such amendments to this Agreement changing the PROVIDER's name shall specifically indicate that no other terms and conditions of this Agreement are thereby changed, unless the change of name amendments is incorporated with a modification or amendment to the Agreement under Section 4.1 of these General

Conditions.

3.4 Independent Contractor Status and Responsibilities, Including Tax Responsibilities.

3.4.1 In the performance of services required under this Agreement, the PROVIDER is an "independent contractor", with the authority and responsibility to control and direct the performance and details of the work and services required under this Agreement; however, the JUDICIARY shall have a general right to inspect work in progress to determine whether, in the JUDICIARY's opinion, the services are being performed by the PROVIDER in compliance with this Agreement.

3.4.2 Unless otherwise provided by special condition, the JUDICIARY shall be free to contract with other individuals and entities to provide services similar to those performed by the Provider under this Agreement, and the PROVIDER shall be free to contract to provide services to other individuals or entities while under contract with the JUDICIARY.

3.4.3 The PROVIDER and the PROVIDER's employees and agents are not by reason of this Agreement, agents or employees of the JUDICIARY for any purpose. The PROVIDER and the PROVIDER's employees and agents shall not be entitled to claim or receive from the JUDICIARY any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to JUDICIARY employees. Unless specifically authorized in writing by the JUDICIARY, the PROVIDER and the PROVIDER's employees and agents are not authorized to speak on behalf and no statement or admission made by the PROVIDER or the PROVIDER's employees or agents shall be attributed to the JUDICIARY, unless specifically adopted by the JUDICIARY in writing.

3.4.4 The PROVIDER shall be responsible for the accuracy, completeness and adequacy of the PROVIDER's performance under this Agreement. Furthermore, the PROVIDER intentionally, voluntarily, and knowingly assumes the sole and entire liability to the PROVIDER's employees and agents, and to any individual not a party to this Agreement, for any loss, damage, or injury caused by the PROVIDER, or the PROVIDER's employees or agents in the course of their employment.

3.4.5 The PROVIDER shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the PROVIDER by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The PROVIDER also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.

3.4.6 The PROVIDER shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, or its successor provision, and shall comply with all requirements thereof. The PROVIDER shall obtain a tax clearance certificate required for final payment under sections 103-53, HRS, or their successor provisions, and these General Conditions.

3.4.7 The PROVIDER is responsible for securing all employee-related insurance coverage for the PROVIDER and the PROVIDER's employees and agents that are or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

3.5 Personnel Requirements.

3.5.1 The PROVIDER shall secure, at the PROVIDER's own expense, all personnel required to perform this Agreement, unless otherwise provided in this Agreement.

3.5.2 The PROVIDER shall ensure that the PROVIDER's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Agreement, and that all applicable licensing and operating requirements imposed or required under federal, state or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Modification and Termination of Agreement.

4.1. Modification of Agreement.

4.1.1 In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement permitted by this Agreement shall be made by written amendment to this Agreement, signed by the PROVIDER and the JUDICIARY.

4.1.2 No oral modification No oral modification, alteration, amendment, change, or extension of any term, provision or condition of this Agreement

shall be permitted.

4.1.3 Tax Clearance. The JUDICIARY may, at its discretion, require the PROVIDER to submit to the JUDICIARY, prior to the JUDICIARY's approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement, a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the PROVIDER have been paid.

4.2 Termination in General. This Agreement may be terminated in whole or in part for a reduction in funds available to pay the PROVIDER, or when, in its sole discretion, the JUDICIARY determines (i) that there has been a change in the conditions upon which the need for the Required Services was based, (ii) that the PROVIDER has failed to provide the Required Services adequately or satisfactorily, or (iii) that other good cause for the whole or partial termination of this Agreement exists. Termination under this section shall be made by a written notice sent to the PROVIDER ten (10) working days prior to the termination date that includes a brief statement of the reason for the termination.

4.3 Termination for Necessity or Convenience. If the JUDICIARY determines, in its sole discretion, that it is necessary or convenient, the Agreement may be terminated in whole or in part at the option of the JUDICIARY, upon ten (10) working days' written notice to the PROVIDER. If the JUDICIARY elects to terminate under this section, the PROVIDER shall be entitled to reasonable payment as determined by the JUDICIARY for satisfactory services rendered under this Agreement up to the time of termination. If the JUDICIARY elects to terminate under this section, the PROVIDER shall cooperate with the JUDICIARY to effect an orderly transition of services to clients.

4.4 Termination by PROVIDER. The PROVIDER may withdraw from the Agreement after obtaining the written consent of the JUDICIARY. The JUDICIARY, upon the PROVIDER's withdrawal, shall determine whether payment is due to the PROVIDER, and the amount that are due. If the JUDICIARY elects to terminate under this section, the PROVIDER shall cooperate with the JUDICIARY to effect an orderly transition of services to clients.

4.5 JUDICIARY's Right of Offset. The JUDICIARY may offset against any monies or other obligations the JUDICIARY owes to the PROVIDER under this Agreement, any amounts owed to the State of Hawaii by the PROVIDER under this Agreement, or any other agreement, or pursuant to any law or other obligation owed to the State of Hawaii by the PROVIDER, including but not limited to the payment of any taxes or levies of any kind or nature. The JUDICIARY shall notify the PROVIDER in writing of any exercise of its right of offset and the nature and amount 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 by agreement with the PROVIDER, and that is covered by an installment payment or other settlement plan approved by the JUDICIARY, provided however, that the PROVIDER is current, and in compliance with, and not delinquent on, any payments, obligations, or duties owed to the State of Hawaii under such payment or other settlement plan.

5. Indemnification

5.1 Indemnification and Defense. The PROVIDER shall defend, indemnify, and hold harmless the JUDICIARY, 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 therefor, arising out of or resulting from the acts or omissions of the PROVIDER or the PROVIDER's employees, officers, agents, or subcontractors under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

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

6. Miscellaneous Provisions

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

6.2 Publicity. Any and all publicity that the PROVIDER may undertake in connection with the Required Services, shall be subject to the limitations of Section 3.4.3 of these General Conditions, and the requirements of this section:

6.2.1 Acknowledgment of JUDICIARY Support. Subject to the limitations of Section 3.4.3 of these General Conditions, the PROVIDER shall in all news releases, public statements, announcements, broadcast, posters, programs, computer postings, and other printed, published, or electronically disseminated materials relating to the PROVIDER's performance under this Agreement, acknowledge the support by the JUDICIARY through appropriations made by the Legislature of the State of Hawaii.

6.2.2 The PROVIDER shall not refer to the JUDICIARY, or any office, agency, or officer thereof, or any JUDICIARY employee, including the Agency procurement officer, or to the services or goods, or both, provided under this Agreement, in any of the PROVIDER's publicity not related to the

PROVIDER's performance under this Agreement, including but not limited to commercial advertisements, recruiting materials, and solicitations for charitable donations.

6.3 Section Headings. The section headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They shall in no way define, limit or extend the scope or intent of the sections to which they pertain.

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

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

6.6 Conflict between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the Procurement Rules or a Procurement Directive, the Procurement Rules or any Procurement Directive in effect on the date this Agreement became effective shall control and are hereby incorporated by reference.

6.7 Entire Agreement. This Agreement sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the JUDICIARY and the PROVIDER relative to this Agreement. This Agreement supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, and representations, oral or written, express or implied, between the JUDICIARY and the PROVIDER other than as set forth or as referred to herein.

6.8 Severability. In the event that any provision of this Agreement is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.

6.9 Waiver. The failure of the JUDICIARY to insist upon the strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the JUDICIARY's right to enforce the same in accordance with this Agreement. The fact that the JUDICIARY specifically refers to one provision of the Procurement Rules or one

section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Agreement shall not constitute a waiver or relinquishment of the JUDICIARY's rights or the PROVIDER's obligations under the Procurement Rules or statutes.

6.10 Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be registered as an original and all of which shall constitute one instrument.