

DEPARTMENT OF EDUCATION

PROCUREMENT AND CONTRACTS BRANCH

SUPPLEMENTAL CONTRACT NO. 2

TO

Contract No. **CO-10998**

AWARDED PURSUANT TO

SECTION 103D-303, Hawaii Revised Statutes (HRS)

and

SECTIONS 3-122-41 through 3-122-60, Hawaii Administrative Rules (HAR)

BASED UPON COMPETITIVE SEALED PROPOSALS

PROJECT NO. RFP D19-060

WITH

PANORAMA EDUCATION, INC.

TO

PROVIDE AND ADMINISTER A STUDENT PERCEPTION SURVEY

FOR

THE DEPARTMENT OF EDUCATION

**For the Period:
July 01, 2021 to June 30, 2022**

STATE OF HAWAII
SUPPLEMENTAL CONTRACT NO. 2
TO CONTRACT NO. CO-10998
(Insert contract number or other identifying information)

This Supplemental Contract No. 2, executed on the respective dates indicated below, is effective as of July 01, 2021, between the DEPARTMENT OF EDUCATION, State of Hawaii ("STATE"), by its SUPERINTENDENT (hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")), whose address is 1390 Miller Street, Honolulu, Hawaii 96813

and PANORAMA EDUCATION, INC., ("CONTRACTOR"),
a corporation

(insert "corporation", "partnership", "joint venture", "sole proprietorship", or other legal form of the Contractor)
under the laws of the State of Delaware, whose business address and federal and state taxpayer identification number are as follows: 24 School Street, 4th Floor, Boston, MA 02108 ; Federal Taxpayer ID No.: 90-0995958 ; Hawaii General Excise Taxpayer ID No.: GE-034-975-0272-01

RECITALS

A. WHEREAS, the STATE and the CONTRACTOR entered into Contract
CO-10998 (RFP D19-060)

(Insert contract number or other identifying information)

dated April 18, 2019 which was amended by Supplemental Contract No(s). 1
dated April 02, 2020 which was amended by Supplemental Contract No(s). n/a
dated _____ which was amended by Supplemental Contract No(s). _____
dated _____ which was amended by Supplemental Contract No(s). _____
dated _____ which was amended by Supplemental Contract No(s). _____
dated _____ (hereafter collectively referred to as "Contract") whereby the
CONTRACTOR agreed to provide the goods or services, or both, described in the Contract; and

B. WHEREAS, the parties now desire to amend the Contract,

NOW, THEREFORE, the STATE and the CONTRACTOR mutually agree to
amend the Contract as follows: (Check Applicable box(es))

- ☐ Amend the SCOPE OF SERVICES according to the terms set forth in Attachment -S1, which is made a part of the Contract.
- ☒ Amend the COMPENSATION AND PAYMENT SCHEDULE according to the terms set forth in Attachment-S2, which is made a part of the Contract.
- ☒ Amend the TIME OF PERFORMANCE according to the terms set forth Attachment-S3, which is made a part of the Contract.
- ☐ Amend the SPECIAL CONDITIONS according to the terms set forth in the Attachment-S6 SUPPLEMENTAL SPECIAL CONDITIONS, which is made a part of the Contract.
- ☐ Recognize the CONTRACTOR'S change of name.

FROM: _____

TO: _____

As set forth in the documents attached hereto as Exhibit _____, and incorporated herein.

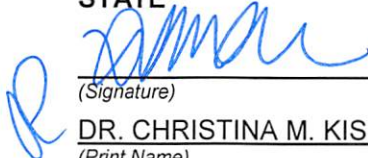
A tax clearance certificate from the State of Hawaii ☐ is ☒ is not required to be submitted to the STATE prior to commencing any performance under this Supplemental Contract.

A tax clearance certificate from the Internal Revenue Service ☐ is ☒ is not required to be submitted to the STATE prior to commencing any performance under this Supplemental Contract.

The entire Contract, as amended herein, shall remain in full force and effect.

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)
DR. CHRISTINA M. KISHIMOTO

(Print Name)
SUPERINTENDENT OF EDUCATION

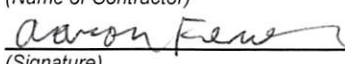
(Print Title)
04/05/2021

(Date)

CORPORATE SEAL
(If available)

CONTRACTOR

Panorama Education

(Name of Contractor)


(Signature)
Aaron Feuer

(Print Name)
CEO

(Print Title) *
3-19-21

(Date)

APPROVED AS TO FORM:

Deputy Attorney General

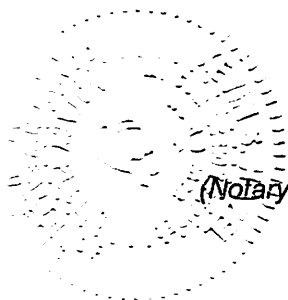
*Evidence of authority of the CONTRACTOR'S representative to sign this Contract for the CONTRACTOR must be attached.

STATE OF HAWAII
CONTRACTOR'S ACKNOWLEDGMENT

STATE OF Massachusetts)
)
) COUNTY OF Suffolk) SS.

On this 19th day of March, 2021 before me appeared
Aaron Fever 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

Chief Executive Officer and _____
of Panorama Education, Inc.
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)

Aaron Fever

(Signature)

Aaron Fever

(Print Name)

Notary Public, State of Massachusetts

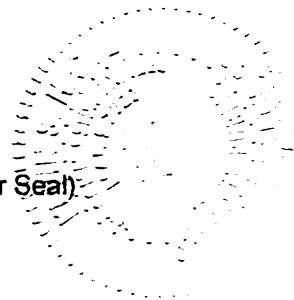
My commission expires: March 9, 2023

Doc. Date: March 19, 2021 # Pages: 9

Notary Name: Kevin S. Hazel Circuit

Doc. Description: To provide and administer a
Student Perception Survey, Project No.
RFP D19-060

(Notary Stamp or Seal)



Kevin S. Hazel

Notary Signature

3/19/2021

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 PANORAMA EDUCATION, INC., 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 Aaron Feuer
(Signature)
Print Name Aaron Feuer
Print Title CEO
Name of Contractor PANORAMA EDUCATION, INC.
Date 3-19-21

Unless specifically described herein, nothing in this Supplemental Contract shall alter, amend, or modify the terms and conditions of the original Contract.

Attachment-S1

STATE OF HAWAII
SCOPE OF SERVICES

The Scope of Services shall remain the same as the original Contract.

STATE OF HAWAII
COMPENSATION AND PAYMENT SCHEDULE

1. TOTAL COMPENSATION

In full consideration of goods delivered and/or services performed by the CONTRACTOR rendered during this 12-month contract period, the STATE agrees to pay the CONTRACTOR the total and complete sum, not to exceed:

FOUR HUNDRED EIGHTY SEVEN THOUSAND EIGHT ONE AND 00/100 DOLLARS
(\$487,081.00)

The contract price shall include all services, materials, overhead, profit, all applicable taxes, any reimbursement costs, and any other incidental and operational expenses incurred by CONTRACTOR in the performance of its obligations hereunder. The contract price shall be the all-inclusive cost to the STATE and no other charges will be honored.

The contract price to the STATE, including profit or fee, shall be adjusted to exclude any significant sums by which the STATE finds that the price was increased because the CONTRACTOR, furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between the parties.

2. COMPENSATION RATES

Total compensation shall be based on the following:

Enrollment Count		SY 2021-2022 (Projected)	Cost Per Student	Total Cost
Regular Education (by Grade Levels)	3	13,078	\$3.50	\$45,773.00
	4	12,864	\$3.50	\$45,024.00
	5	12,789	\$3.50	\$44,761.50
	6	12,671	\$3.50	\$44,348.50
	7	9,496	\$3.50	\$33,236.00
	8	12,072	\$3.50	\$42,252.00
	9	13,442	\$3.50	\$47,047.00
	10	12,423	\$3.50	\$43,480.50
	11	11,812	\$3.50	\$41,342.00
	12	10,300	\$3.50	\$36,050.00
Subtotal Regular Education		120,947		\$423,314.50
Special Education (by Grade Bands)	K-6	9,274	\$3.50	\$32,459.00
	7-8	2,783	\$3.50	\$9,740.50
	9-12	6,162	\$3.50	\$21,567.00
Subtotal Special Education		18,219		\$63,766.50
Grand Total Regular and Special Education		139,166		\$487,081.00

3. PAYMENT SCHEDULE

Payment No.	Tasks for SY 2021-2022 Survey Administration	Deadlines and Estimated Payment Dates	Estimated Payment Amount (Not to Exceed)
1	Upon completion of the CONTRACTOR's detailed project implementation plan for the fall 2021 administration of the student survey.	Within ten (10) business days following submission of finalized project implementation plan, with estimated payment to the CONTRACTOR on or about July 30, 2021	10 percent
2	Upon placement of full order details for print-based survey forms, envelopes and online login cards.	By September 20, 2021, with estimated payment to the CONTRACTOR on or about October 20, 2021.	15 percent
3	Upon completion of the fall 2021 administration of the Panorama Student Survey, and upon submission of monthly reports	By December 13, 2021, with estimated payment to the CONTRACTOR on or about January 2022.	25 percent
4	Upon distribution of reports and finalization of the raw data and favorability, NCE, and school climate score files from fall 2021 administration of the Panorama Student Survey.	By February 15, 2022, with estimated payment to the CONTRACTOR on or about March 15, 2022.	25 percent
5	Upon completion of the Panorama Help Desk support for the Panorama reports, and upon submission of monthly reports for November and December 2021, January, and February 2022.	By March 15, 2022, with estimated payment to the CONTRACTOR on or about April 15, 2022.	15 percent
6	Upon the submission of the March, April and May 2022 monthly report and final project summary for SY 21-22.	By May 1, 2022, with final payment to the CONTRACTOR on or about June 30, 2022.	10 percent

Statement of Contract Funds

The total Contract price is as follows:

Original contract amount:	\$ 478,072.00
Supplemental Contract No. 1:	\$ 485,957.50
Supplemental Contract No. 2:	<u>\$ 487,081.00</u>
Total:	\$1,451,110.50

The **final payment** on the contract shall be for services rendered during the billing period just prior to the contract anniversary date. A tax clearance certificate, not over two months old and with an original green "certified copy" stamp, must accompany the invoice for final payment. Contractor may also submit an original CERTIFICATE OF VENDOR COMPLIANCE as issued by the State Procurement Office via an online system, also referred to as "Hawaii Compliance Express". Details regarding this online application process can be viewed at: <http://vendors.ehawaii.gov/hce/>.

STATE OF HAWAII

TIME OF PERFORMANCE

The original Contract was for the period, April 18, 2019 through June 30, 2020 and included options to extend for two (2) additional twelve (12) month periods at the same terms and conditions of the original contract or as negotiated between the DOE and the Contractor and contingent upon funding availability.

In accordance with the terms of the original Contract, this Contract was extended for the first twelve (12) month period, July 01, 2020 through June 30, 2021 via Supplemental Contract No. 1.

In accordance with the terms of the original Contract, this Contract is now extended for the first twelve (12) month period, July 01, 2021 through June 30, 2022 via Supplemental Contract No. 2.

Beyond June 30, 2022, there shall be no additional option to extend this contract.

STATE OF HAWAII
SUPPLEMENTAL SPECIAL CONDITIONS

No amendment to Supplemental Special Conditions.

DEPARTMENT OF EDUCATION
PROCUREMENT AND CONTRACTS BRANCH

SUPPLEMENTAL CONTRACT NO. 1
TO

Contract No. **CO-10998**

AWARDED PURSUANT TO
SECTION 103D-303, Hawaii Revised Statutes (HRS)
and
SECTIONS 3-122-41 through 3-122-60, Hawaii Administrative Rules (HAR)

BASED UPON COMPETITIVE SEALED PROPOSALS

PROJECT NO. RFP D19-060

WITH

PANORAMA EDUCATION, INC.

TO

PROVIDE AND ADMINISTER A STUDENT PERCEPTION SURVEY
FOR

THE DEPARTMENT OF EDUCATION

**For the Period:
July 01, 2010 to June 30, 2011**

STATE OF HAWAII
SUPPLEMENTAL CONTRACT NO. 1
TO CONTRACT NO. CO-10998
(Insert contract number or other identifying information)

This Supplemental Contract No. 1, executed on the respective dates indicated below, is effective as of July 01, 2020, between the DEPARTMENT OF EDUCATION, State of Hawaii ("STATE"), by its SUPERINTENDENT (hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")), whose address is 1390 Miller Street, Honolulu, Hawaii 96813 and PANORAMA EDUCATION, INC., ("CONTRACTOR"), a corporation *(insert "corporation", "partnership", "joint venture", "sole proprietorship", or other legal form of the Contractor)* under the laws of the State of Delaware, whose business address and federal and state taxpayer identification number are as follows: 24 School Street, 4th Floor, Boston, MA 02108 ; Federal Taxpayer ID No.: 90-0995958 ; Hawaii General Excise Taxpayer ID No.: GE-034-975-0272-01

RECITALS

A. WHEREAS, the STATE and the CONTRACTOR entered into Contract CO-10998 (RFP D19-060) *(Insert contract number or other identifying information)* dated April 18, 2019 which was amended by Supplemental Contract No(s). _____ dated _____ which was amended by Supplemental Contract No(s). _____ dated _____ which was amended by Supplemental Contract No(s). _____ dated _____ which was amended by Supplemental Contract No(s). _____ dated _____ which was amended by Supplemental Contract No(s). _____ dated _____ (hereafter collectively referred to as "Contract") whereby the CONTRACTOR agreed to provide the goods or services, or both, described in the Contract; and

B. WHEREAS, the parties now desire to amend the Contract,
NOW, THEREFORE, the STATE and the CONTRACTOR mutually agree to amend the Contract as follows: (Check Applicable box(es))

- ☐ Amend the SCOPE OF SERVICES according to the terms set forth in Attachment -S1, which is made a part of the Contract.
- ☒ Amend the COMPENSATION AND PAYMENT SCHEDULE according to the terms set forth in Attachment-S2, which is made a part of the Contract.
- ☒ Amend the TIME OF PERFORMANCE according to the terms set forth Attachment-S3, which is made a part of the Contract.
- ☐ Amend the SPECIAL CONDITIONS according to the terms set forth in the Attachment-S6 SUPPLEMENTAL SPECIAL CONDITIONS, which is made a part of the Contract.
- ☐ Recognize the CONTRACTOR'S change of name.

FROM: _____

TO: _____

As set forth in the documents attached hereto as Exhibit _____, and incorporated herein.


A tax clearance certificate from the State of Hawaii ☐ is ☒ is not required to be submitted to the STATE prior to commencing any performance under this Supplemental Contract.


A tax clearance certificate from the Internal Revenue Service ☐ is ☒ is not required to be submitted to the STATE prior to commencing any performance under this Supplemental Contract.

The entire Contract, as amended herein, shall remain in full force and effect.

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)

DR. CHRISTINA M. KISHIMOTO

(Print Name)
SUPERINTENDENT OF EDUCATION

(Print Title)
04/02/2020

(Date)

CORPORATE SEAL
(If available)

CONTRACTOR

Panorama Education, Inc.

(Name of Contractor)
Katie Mallett

(Signature)
Katie Mallett

(Print Name)
CFO

(Print Title) *

March 23, 2020

(Date)

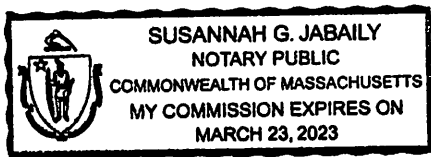
APPROVED AS TO FORM:

Deputy Attorney General


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

CONTRACTOR'S ACKNOWLEDGMENT

Chief Financial Officer and _____
of Panorama Education, Inc.,
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)

Susannah G. Tabarly
(Print Name)

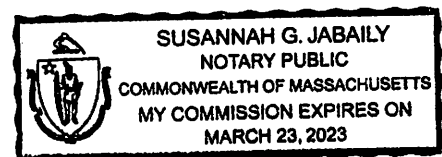
Notary Public, State of Massachusetts

My commission expires: March 23, 2023


Doc. Date: March 11th, 2020 # Pages: 10

Notary Name: Susannah Jabaily Circuit

Doc. Description: To Provide and Administer
a Student Perception Survey, Project No.
RFP D19-060, Contract No. CO-10998



(Notary Stamp or Seal)


 Notary Signature

3/23/2020
 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 PANORAMA EDUCATION, INC., 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 Katie Mallett
(Signature)

Print Name Katie Mallett

Print Title CFO

Name of Contractor Panorama Education, Inc.

Date March 23, 2020

Unless specifically described herein, nothing in this Supplemental Contract shall alter, amend, or modify the terms and conditions of the original Contract.

Attachment-S1

STATE OF HAWAII

SCOPE OF SERVICES

The Scope of Services shall remain the same as the original Contract.

STATE OF HAWAII
COMPENSATION AND PAYMENT SCHEDULE

1. TOTAL COMPENSATION

In full consideration of goods delivered and/or services performed by the CONTRACTOR rendered during this 12-month contract period, the STATE agrees to pay the CONTRACTOR the total and complete sum, not to exceed:

FOUR HUNDRED EIGHTY FIVE THOUSAND NINE HUNDRED FIFTY SEVEN AND 50/100
DOLLARS (\$485,957.50)

The contract price shall include all services, materials, overhead, profit, all applicable taxes, any reimbursement costs, and any other incidental and operational expenses incurred by CONTRACTOR in the performance of its obligations hereunder. The contract price shall be the all-inclusive cost to the STATE and no other charges will be honored.

The contract price to the STATE, including profit or fee, shall be adjusted to exclude any significant sums by which the STATE finds that the price was increased because the CONTRACTOR, furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between the parties.

2. COMPENSATION RATES

Total compensation shall be based on the following:

Enrollment Count		SY 2020-2021 (Projected)	Cost Per Student	Total Cost
Regular Education (by Grade Levels)	3	13,065	\$3.50	\$45,727.50
	4	12,975	\$3.50	\$45,412.50
	5	13,272	\$3.50	\$46,452.00
	6	9,954	\$3.50	\$34,839.00
	7	12,832	\$3.50	\$44,912.00
	8	12,091	\$3.50	\$42,318.50
	9	13,489	\$3.50	\$47,211.50
	10	12,024	\$3.50	\$42,084.00
	11	11,227	\$3.50	\$39,294.50
	12	9,878	\$3.50	\$34,573.00
Subtotal Regular Education		120,807		\$422,824.50
Special Education (by Grade Bands)	K-6	8,920	\$3.50	\$31,220.00
	7-8	3,121	\$3.50	\$10,923.50
	9-12	5,997	\$3.50	\$20,989.50
Subtotal Special Education		18,038		\$63,133.00
Grand Total Regular and Special Education		138,845		\$485,957.50

3. PAYMENT SCHEDULE

Payment No.	Tasks for SY 2020-2021 Survey Administration	Deadlines and Estimated Payment Dates	Estimated Payment Amount (Not to Exceed)
1	Upon completion of the CONTRACTOR's detailed project implementation plan for the fall 2020 administration of the student survey.	Within ten (10) business days following submission of finalized project implementation plan, with estimated payment to the CONTRACTOR on or about July 30, 2020	10 percent
2	Upon placement of full order details for print-based survey forms, envelopes and online login cards.	By September 20, 2020, with estimated payment to the CONTRACTOR on or about October 20, 2020.	15 percent
3	Upon completion of the fall 2020 administration of the Panorama Student Survey, and upon submission of monthly reports	By December 13, 2020, with estimated payment to the CONTRACTOR on or about January 2021.	25 percent
4	Upon distribution of reports and finalization of the raw data and favorability, NCE, and school climate score files from fall 2020 administration of the Panorama Student Survey.	By February 15, 2021, with estimated payment to the CONTRACTOR on or about March 15, 2021.	25 percent
5	Upon completion of the Panorama Help Desk support for the Panorama reports, and upon submission of monthly reports for November and December 2020, January, and February 2021.	By March 15, 2021, with estimated payment to the CONTRACTOR on or about April 15, 2021.	15 percent
6	Upon the submission of the March, April and May 2021 monthly report and final project summary for SY 20-21	By May 1, 2021, with final payment to the CONTRACTOR on or about June 30, 2021	10 percent

Statement of Contract Funds

The total Contract price is as follows:

Original contract amount:	\$ 478,072.00
Supplemental Contract No. 1:	<u>\$ 485,957.50</u>
Total:	\$ 964,029.50

The **final payment** on the contract shall be for services rendered during the billing period just prior to the contract anniversary date. A tax clearance certificate, not over two months old and with an original green "certified copy" stamp, must accompany the invoice for final payment. Contractor may also submit an original CERTIFICATE OF VENDOR COMPLIANCE as issued by the State Procurement Office via an online system, also referred to as "Hawaii Compliance Express". Details regarding this online application process can be viewed at: <http://vendors.ehawaii.gov/hce/>.

STATE OF HAWAII

TIME OF PERFORMANCE

The original Contract was for the period, April 18, 2019 through June 30, 2020 and included options to extend for two (2) additional twelve (12) month periods at the same terms and conditions of the original contract or as negotiated between the DOE and the Contractor and contingent upon funding availability.

In accordance with the terms of the original Contract, this Contract is now extended for the first twelve (12) month period, July 01, 2020 through June 30, 2021 via Supplemental Contract No. 1.

Beyond June 30, 2021, there shall be one (1) additional option to extend this contract.

STATE OF HAWAII
SUPPLEMENTAL SPECIAL CONDITIONS

No amendment to Supplemental Special Conditions

DAVID Y. IGE
GOVERNOR



DR. CHRISTINA M. KISHIMOTO
SUPERINTENDENT

STATE OF HAWAII
DEPARTMENT OF EDUCATION
PROCUREMENT and CONTRACTS BRANCH
94-275 Mokuola Street, Room 200
WAIPAHU, HAWAII 96797

APR 18 2019

(date)

To: Panorama Education, Inc.
24 School Street, 4th Floor
Boston, MA 02108

From: Procurement Administrator
Department of Education
Office of Fiscal Services
Procurement & Contracts Branch

A handwritten signature in blue ink, likely belonging to the Procurement Administrator, is written over the "From:" field.

Subject: **Notice to Proceed**
Project No. RFP D19-060
Contract No. CO-10998
Description: To Provide and Administer a Student Perception Survey

You are hereby notified that subject contract has been fully executed. Work on this project shall commence as of this date and/or in accordance with the terms of this agreement.

Your attention is called to the completion date as stipulated herein. Request(s) for extension of completion date will be considered only when submitted in writing to the HDOE Procurement and Contracts Branch **prior to completion date**. Request must include documented justification for extension.

Any changes to the contract shall be processed through the Procurement and Contracts Branch, Waipahu Civic Center, 94-275 Mokuola Street, Room 200, Waipahu, Hawaii 96797.

Questions regarding this contract may be directed to Nicole Agena at telephone 808-675-0130 or via email at nicole_agena@notes.k12.hi.us.

DEPARTMENT OF EDUCATION
PROCUREMENT AND CONTRACTS BRANCH

Contract No. CO-10998

AWARDED PURSUANT TO
SECTION 103D-303, Hawaii Revised Statutes (HRS)
and
SECTIONS 3-122-41 through 3-122-60, Hawaii Administrative Rules (HAR)

BASED UPON COMPETITIVE SEALED PROPOSALS

PROJECT NO. RFP D19-060

WITH

PANORAMA EDUCATION, INC.

TO PROVIDE AND ADMINISTER A STUDENT PERCEPTION SURVEY

**STATE OF HAWAII
CONTRACT FOR GOODS OR SERVICES BASED UPON
COMPETITIVE SEALED PROPOSALS**

This Contract, executed on the respective dates indicated below, is effective upon full execution of the contract, between the DEPARTMENT OF EDUCATION,
(Insert name of state department, agency, board or commission)
State of Hawaii ("STATE"), by its SUPERINTENDENT
(Insert title of person signing for State)
(hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")), whose address is 1390 Miller Street, Honolulu, Hawaii 96813
and PANORAMA EDUCATION, INC., ("CONTRACTOR"),
("CONTRACTOR"), a corporation
(Insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the Contractor)
under the laws of the State of Delaware, whose business address and federal and state taxpayer identification number are as follows: 24 School Street, 4th Floor, Boston, MA 02108; Federal Taxpayer ID No. 90-0995958; Hawaii GE Tax No. GE-034-975-0272-01

RECITALS

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

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 \$103D and §302A-1111, HRS, the STATE is authorized to enter
(Legal authority to enter into Contract)
into this Contract.

F. Money is available to fund this Contract pursuant to:
(1) Program ID 25218 or (2) n/a
(Identify state sources) (Identify federal sources)

or both, in the following amounts:

State	<u>\$478,072.00</u>
Federal	<u>\$n/a</u>

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 D19-060 ("RFP"), the CONTRACTOR's accepted proposal ("Proposal"), and Attachment-S1, all 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 FOUR HUNDRED SEVENTY EIGHT THOUSAND SEVENTY TWO AND 00/100 DOLLARS----- (\$478,072.00), including approved costs incurred and taxes, at the time and in the manner set forth in the RFP, CONTRACTOR's Proposal, and the Compensation and Payment Schedule set forth in Attachment-S2, which is made a part of this Contract.

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 N/A DOLLARS (\$ N/A).

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

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached hereto 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 N/A DOLLARS (\$ N/A) per day, in accordance with 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 as indicated in this 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)

DR. CHRISTINA M. KISHIMOTO
(Print Name)


SUPERINTENDENT OF EDUCATION
(Print Title)

04/18/2019
(Date)

CORPORATE SEAL
(If available)

CONTRACTOR

Panorama Education, Inc.
(Name of Contractor)


(Signature)

Katie Mallett
(Print Name)

CFO
(Print Title)

4/9/19
(Date)

APPROVED AS TO FORM:


Deputy Attorney General 4-16-19

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

STATE OF HAWAII
CONTRACTOR'S ACKNOWLEDGMENT

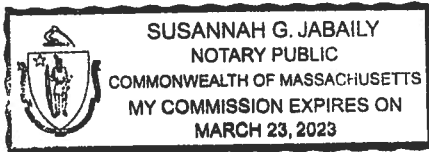
STATE OF Massachusetts)
) SS.
)
) COUNTY OF Suffolk)

On this 9th day of April, 2019 before me appeared

Katie Mallett 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

Chief Financial Officer and _____

of Panorama Education, Inc.,
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)

Susannah G. Jabaily
(Signature)
Susannah G. Jabaily
(Print Name)

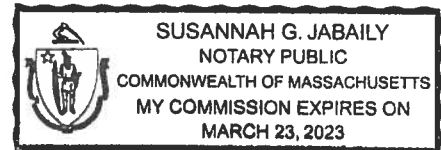
Notary Public, State of Massachusetts

My commission expires: March 23, 2023

Doc. Date: April 3, 2019 # Pages: 47

Notary Name: Susannah Jabaily Circuit

Doc. Description: To Provide and Administer
a Student Perception Survey,
Project No. RFP D19-06D CD-10998



(Notary Stamp or Seal)

Susannah G. Jabaily 4/9/2019
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 Panorama Education, Inc., 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 Katie Mallett
(Signature)
Print Name Katie Mallett
Print Title CFO
Name of Contractor Panorama Education, Inc.
Date 4/9/19

STATE OF HAWAII

SCOPE OF SERVICES

1. CONTRACT ADMINISTRATOR

For purposes of this contract, the person named below or his/her duly authorized representative or successor in office is designated Contract Administrator (CA). The CA may be contacted as follows:

Contract Administrator: Mr. Keith Kameoka
Telephone Number: (808) 733-4008
E-mail Address: keith_kameoka@notes.k12.hi.us

The CA is responsible for:

- 1.1. The terms, conditions, quantities, specifications, scope of services, other contract terms, and all decisions relating to the contract;
- 1.2. Monitoring the CONTRACTOR's work, documenting that CONTRACTOR maintains the required insurance coverage (if applicable), resolving contract disputes and discrepancies, evaluating the work of the CONTRACTOR, assuring the services or goods are delivered as required in the contract, and processing payment for services rendered; and
- 1.3. Notifying the Procurement and Contracts Branch in the event of change in scope of work, change in the performance period, increase or decrease in total compensation, and/or changes in any other contract terms.

Notwithstanding the responsibilities set forth hereinabove, any coordination of services falling outside those articulated above shall remain with the head of the purchasing agency, as set forth in the attached General Conditions (see General Conditions, paragraph 1, entitled "Coordination of Services by the STATE.").

2. POINT OF CONTACT

The CA has designated the following person as Point-of-Contact (POC) for this contract. As such, the POC should be the initial contact on all matters related to this contract. The POC can be contacted as follows:

POC: Ms. Morgan Yamamoto
Telephone Number: (808) 733-4008
E-mail Address: morgan_yamamoto@notes.k12.hi.us

3. CONTRACTOR'S POINT OF CONTACT

CONTRACTOR's primary point of contact is as follows:

POC: Ms. Katie Mallett
Telephone: (617) 746-2786
E-mail Address: kmallett@panoramaed.com

CONTRACTOR shall notify the STATE, verbally within twenty-four (24) hours, upon the occurrence of any of the events indicated below:

- 3.1. Change in the CONTRACTOR's business address or phone number;
- 3.2. Change in the CONTRACTOR's tax identification number; or
- 3.3. Any other situation that could reasonably be expected to affect the CONTRACTOR's ability to carry out its obligation under this contract.

4. SUBCONTRACTING

Prior to award of the contract, no work or services shall be subcontracted or assigned without the prior written approval of the CA. After award of the contract, no work or services shall be subcontracted or assigned without the prior written approval of the CA. No subcontract shall under any circumstances relieve the CONTRACTOR of its obligations and liability under its Contract with the HIDEOE. All persons engaged in performing the work covered by the Contract shall be considered employees of the CONTRACTOR.

5. CONTRACT STAFFING REQUIREMENTS

Personnel, whose names and resumes are submitted in the Proposal, shall not be removed from the project without prior approval of the CA. Substitute or additional personnel shall not be used for the project until a resume is received and approved by the CA. The HIDEOE shall have the right, and the CONTRACTOR shall comply with any request, to remove and replace any personnel from all work on the project effective immediately upon notification by the HIDEOE. Personnel changes that are not approved by the CA may be grounds for Contract termination.

6. EXCLUSION OF SPECIFIC WORKERS

The STATE reserves the right to require the CONTRACTOR to remove an employee, agent, subcontractor or volunteer (Worker) from performing work under this contract. The CA shall notify the CONTRACTOR in writing and this exclusion of a specific Worker(s) shall take effect as indicated on the notice. The CONTRACTOR may appeal this decision to the CA, in writing within ten (10) working days of receipt of the notice. Removal of the employee, agent, subcontractor or volunteer shall remain in effect pending the outcome of the appeal. This provision shall not infringe upon the right of the CONTRACTOR to employ the removed individual, but shall apply to any work requiring interaction with the HIDEOE, its employees or students.

7. INSPECTION AND PROCEDURAL CHANGES; RELIEF AVAILABLE TO STATE

All work is subject to inspection, evaluation, and approval by the CA. The HIDEOE may employ all reasonable means to ensure that the work is being performed in compliance with the contract. Should the CA determine that corrections or changes are necessary in order to accomplish the intent or purpose of the contract, the CA may direct the CONTRACTOR to make such changes.

Failure of the CONTRACTOR to perform any provisions of the Contract (based on the identified portion of unacceptable work received) the HIDEOE may determine CONTRACTOR is in non-compliance with Contract requirements and may:

- 7.1. Suspend Payments – Temporarily withhold or disallow all or part of the billing cost/payments pending correction of a deficiency or a non-submission of a required deliverable by the CONTRACTOR;
- 7.2. Seek Reimbursement – Seek reimbursement from the CONTRACTOR or withhold future payments for any funds paid to the CONTRACTOR subsequent to a determination that such was unauthorized, fraudulently obtained, or inappropriately billed; and

Seek Market Value – In the event the CONTRACTOR fails, refuses or neglects to perform the services in accordance with the requirements of these Special Conditions, the Scope of Services or the General Conditions, the STATE reserves the right to purchase, in the open market, a corresponding quantity of the services specified

herein and to deduct from any monies due or that may thereafter become due to the CONTRACTOR, the difference between the price named in the contract and the actual cost to the STATE. In case any money due the CONTRACTOR is insufficient for said purpose, the CONTRACTOR shall pay the difference upon demand from the STATE. The STATE may also utilize all other remedies provided by law.

8. LIABILITY INSURANCE

The CONTRACTOR shall maintain in full force and effect, during the life of this contract, liability and property damage insurance. This insurance shall protect the CONTRACTOR and his subcontractors, if any, from claims for damages for personal injury, accidental death and property damage which may arise from operations under this contract, whether such operations be by himself or by a subcontractor or anyone directly or indirectly employed by either of them. If any subcontractor is involved in the performance of the contract, the insurance policy or policies shall name the subcontractor as additional insured.

As an alternative to the CONTRACTOR providing insurance to cover operations performed by a subcontractor and naming the subcontractor as additional insured, CONTRACTOR may require subcontractor to provide its own insurance which meets the requirements herein. It is understood that a subcontractor's insurance policy(ies) are in addition to the CONTRACTOR's own policy or policies.

The following minimum insurance coverage(s) and limit(s) shall be provided by the CONTRACTOR, including its subcontractor(s) where appropriate:

<u>Coverage</u>	<u>Limits</u>
General Liability , Commercial (Occurrence Form)	\$2,000,000 aggregate \$1,000,000 combined single limit per occurrence for bodily injury and property damage
Automobile Liability Combined Single Limit	\$1,000,000 per accident
Professional Liability Insurance	\$1,000,000 per claim and \$2,000,000 per annual aggregate

General liability and automobile liability policies required by this contract, including a subcontractor's policy, shall contain the following clauses:

- 1) "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."
- 2) "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."

The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the contract, including supplemental agreements. Each insurance policy shall be written by 1) an insurance company licensed to do business in the State of Hawaii, or 2) if not licensed by the State of Hawaii, an insurance company which meets §431:8-301, Hawaii Revised Statutes.

Upon execution of the contract, the CONTRACTOR agrees to deposit with the HIDEOE certificate(s) of insurance necessary to satisfy the HIDEOE that the insurance provisions of this contract have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the HIDEOE during the entire term of this contract, including those of its subcontractor(s), where appropriate. Upon request by the HIDEOE, CONTRACTOR shall be responsible for furnishing a copy of the policy(ies).

Failure of the CONTRACTOR to provide and keep in force such insurance shall be regarded as material default under this contract, entitling the HIDEOE to exercise any or all of the remedies provided herein.

The procuring of such required insurance shall not be construed to limit CONTRACTOR's liability hereunder nor to fulfill the indemnification provisions and requirements of this contract. Notwithstanding said policy(ies) of insurance, CONTRACTOR shall be obligated for the full and total amount of any damage, injury, or loss caused by the CONTRACTOR, its employees, officers, or agents, in connection with this Contract.

CONTRACTOR shall notify the STATE, via written notice within twenty-four (24) hours should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

9. SCOPE OF WORK

In addition to the CONTRACTOR's proposed solution and technical proposal which is hereby incorporated into this contract, the following deliverables shall be included in the scope of services:

9.1. Student Stakeholder Survey Requirements

- 9.1.1. Provide a survey instrument that records students' perceptions of classroom practice, student engagement and school climate (including items that measure: social-emotional learning (SEL), school culture, facilities, etc.); and uses developmentally-appropriate question metrics that have an established and tested correlation to student achievement. For purposes of this section, "established and tested" means based on research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs, including research that:
 - 9.1.1.1. Employs systematic, empirical methods that draw on observation or experiment;
 - 9.1.1.2. Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
 - 9.1.1.3. Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
 - 9.1.1.4. Demonstrates a statistically significant effect on improving student outcomes or other relevant outcomes;
 - 9.1.1.5. Demonstrates a rationale based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes; and
 - 9.1.1.6. Includes ongoing efforts to examine the effects of such activity, strategy, or intervention.

Refer to Title 20, *United States Code*, section 7801(21), regarding the definition of "evidence-based research", upon which the definition of "established and tested" is substantially based.

- 9.1.2. Because school capacity to host the online administration of a student stakeholder survey varies considerably across the state, CONTRACTOR must be able to print, pack, ship, deliver, collect, scan, process, and support all activities associated with the administration of pre-printed student stakeholder paper surveys in English and Hawaiian, or otherwise provide for the same. (See sections 9.2.7.2.1 and 9.2.7.2.2 regarding the STATE's assumptions for online and paper administration of the student stakeholder survey.)
- 9.1.3. Student stakeholder survey instrument shall be able to record student's perceptions of classroom practice, student engagement and school climate (including items that measure: SEL, school culture, facilities, etc.) for grades 3 through 12.

- 9.1.4. Student stakeholder survey instrument shall have the option to customize questions based on needs identified by the State.
- 9.1.5. Administer student stakeholder surveys to multi-track schools, schools with "wheel courses" and "block scheduling" that change classes at the end of each quarter, multi-level school (e.g. K-12, 6-12, etc.) and single-track schools.
- 9.1.6. Student Stakeholder surveys shall be delivered in online format for English, Hawaiian, Chuukese, Spanish, Tagalog, Vietnamese, Tongan, Chinese – Simplified and Traditional, Marshallese, Korean, Samoan, Ilocano, Japanese, and Visayan (Cebuano), and four (4) other languages as may be specified by the HIDOE; provided that the total number of translations shall not exceed 20 languages, including *Braille* books.
- 9.1.7. Provide "live", second-tier help-desk support to the STATE's EES help-desk, complex area personnel, schools, teachers, and other individuals supporting the student stakeholder survey component in the EES from at least 7:30 a.m. to 3:30 p.m. Hawaii Standard Time (not Daylight Savings Time) during the fall 2019 administration window of the student stakeholder survey and at least 2 weeks after report distribution. (NOTE: The STATE's EES help-desk will provide first-tier support to HIDOE complex area superintendents, principals, teachers, and other STATE-identified staff.)
- 9.1.8. Link students' perceptions of classroom practice, student engagement and school climate (including items that measure: SEL, school culture, facilities, etc.) from complex area to school, school to teacher, teacher to class period, class period to student, and vice-versa.
- 9.1.9. Provide comprehensive and construct reports for teachers who meet the minimum response requirements established by the CONTRACTOR. The reports include comprehensive tabular views of student responses to student stakeholder survey questions and comparable views of student responses to student stakeholder survey questions over time, in addition to graphical views that anonymously compare a teacher's scores within their school, complex area and across the state.
- 9.1.10. Provide comprehensive and construct reports for school administrators. The reports include comprehensive tabular views of student responses to student stakeholder survey questions and comparable views of student responses to student stakeholder survey questions over time, in addition to graphical views that anonymously or non-anonymously compare teachers' scores within their school, complex area and across the state.
- 9.1.11. Provide comprehensive and construct reports for complex area and state administrators. The reports include comprehensive tabular views of student responses to student stakeholder survey questions and comparable views of student responses to student stakeholder survey questions over time, in addition to graphical views that anonymously or non-anonymously compare teachers' scores across schools within their complex area and across the state.
- 9.1.12. Provide training, including web-based training, on the proper administration (e.g., processes and protocols) of the student stakeholder survey and the appropriate use of student stakeholder survey reports to complex area superintendents, principals, teachers, and other STATE-identified staff.
- 9.1.13. Student stakeholder survey instrument is cross-walked to Components 2b, 2d, 3b, 3c, and 3d of the *Hawaii Adapted Framework for Teaching – Classroom Observation Rubric, Revised July 2013* (refer to Exhibit A), for purposes of comparing students' perceptions against school administrators' observations of classroom practice, school climate, and pupil engagement.

9.2. Description of Work

9.2.1. General Tasks and Activities for SY 2019-2020

The CONTRACTOR shall engage with the STATE in the planning and administration of the student stakeholder survey as a component of the EES in 292 HIDOE Public and Charter schools (Refer to Section 2, Purpose and Overview, Table 2) during SY 2019-2020 as follows:

- 9.2.1.1. Review existing materials, solutions, and procedures for collecting, analyzing, and reporting student stakeholder survey results in printable online reports.
- 9.2.1.2. Provide at least 1 telephone or web-based meeting with the STATE regarding the STATE's training needs. CONTRACTOR shall establish a clear scope and timeline so as to not exceed the timeline and budget specified in the contract.
- 9.2.1.3. Share insights and provide recommendations for improving the outcomes of the student stakeholder survey project through training.
- 9.2.1.4. Submit written, monthly status reports, including supplementary presentation materials, on all completed, ongoing, and upcoming training activities, and any outcomes, issues, or corrective actions relating to these training activities.
- 9.2.1.5. Provide the student stakeholder survey project team with:
 - 9.2.1.5.1. A master project calendar, which shall be updated by the CONTRACTOR as needed;
 - 9.2.1.5.2. An issues log, which shall be updated by the CONTRACTOR at least weekly as part of weekly meeting notes;
 - 9.2.1.5.3. Written status reports that document progress on key project milestones and decisions, including descriptions of any next steps necessary to resolve major issues with the student stakeholder survey project;
 - 9.2.1.5.4. Weekly management meetings, which shall be conducted by the CONTRACTOR using a CONTRACTOR-provided toll-free telephone number;
 - 9.2.1.5.5. An agenda for the weekly management meetings, which shall be provided by the CONTRACTOR to the student stakeholder survey project team at least 24 hours in advance of the meeting. The Project Manager for the CONTRACTOR and the Contract Administrator for the STATE may cancel or reschedule meetings within 24 hours of the meeting date and time; and
 - 9.2.1.5.6. Minutes of the weekly management meetings, which shall be provided by the CONTRACTOR to the student stakeholder survey project team within 24 hours following the meeting.
- 9.2.1.6. When requested by the STATE, attend meetings in Hawaii with the student stakeholder survey project team. These meetings shall be scoped, scheduled, and agreed upon in the detailed project implementation plan so as to not exceed the designated number of days specified in the contract.

9.2.2. Detailed Project Implementation Plan

The CONTRACTOR, in consultation with the STATE, shall develop a detailed project implementation plan within 10 business days following full execution of the contract. The CONTRACTOR shall produce at least 1 draft of the detailed project implementation plan and provide the STATE with at least 2 opportunities to edit the same. A clear scope and timeline shall be established so as to not exceed the timeline and budget specified in the contract. The detailed project implementation plan shall address the general timeline for all the deliverables contained within the contract and shall contain a specific timeline for the activities specified in section 3.

- 9.2.2.1. The CONTRACTOR shall provide updated, written summaries of current research on best practices in other countries, states, and school districts with respect to administration of the student stakeholder survey, the use of student stakeholder survey results, and outreach to and training of stakeholders and the general public.
- 9.2.2.2. The CONTRACTOR, in consultation with the STATE, shall identify designated windows for administering the student stakeholder survey to enable multi-track year-round schools and schools with "wheel courses" and "block scheduling", which change classes at the end of each quarter, to survey all their students in fall 2019.
- 9.2.2.3. The CONTRACTOR shall create a schedule for transferring student stakeholder survey data to the STATE, which shall include sufficient time for the STATE to conduct its own quality assurance review of the CONTRACTOR's data deliverables.
- 9.2.2.4. The CONTRACTOR shall schedule regular communications and conference calls or other means of communication (e.g., webinars) to support the student stakeholder survey project on dates and at times mutually agreed upon by the STATE and the CONTRACTOR.

9.2.3. Timeline of Major Tasks

Section	<p><i>The estimated timeline of major tasks that shall be incorporated into the detailed project implementation plan include:</i></p> <p>Tasks, Fall 2019 Administration</p>	Estimated Timeline
9.2.3.1	Provide training, including web-based training, on the proper administration (e.g., processes and protocols) of the student stakeholder survey to complex area superintendents, HIDOE and Charter School principals and teachers, and other STATE-identified staff.	<p>September – October 2019</p> <p>To be scoped, scheduled, and agreed upon in the detailed project implementation plan so as to not exceed the scope and budget specified in the contract.</p>
9.2.3.2	Provide training, including web-based training, on the appropriate use of student stakeholder survey reports to complex area superintendents, HIDOE and Charter School principals and teachers, and other STATE-identified staff.	<p>January 2020</p> <p>To be scoped, scheduled, and agreed upon in the detailed project implementation plan so as to not exceed the scope and budget specified in the contract.</p>
9.2.3.3	Administer student stakeholder survey, Schedule 1A (Applicable to specified multi-track schools; and schools with "wheel courses" and "block scheduling" that change classes at the end of each quarter), contingent on the assumptions and dependencies specified in sections 9.2.3.7 and 9.2.3.8 materializing.	<p>October 2019</p> <p>Timelines and dependencies to be scoped, scheduled, and agreed upon in the detailed project implementation plan so as to not exceed the scope and budget specified in the contract.</p>
9.2.3.4	Administer student stakeholder survey, Schedule 2B (Applicable to specified multi-track schools; schools with "wheel courses" and "block scheduling" that change classes at the end of each quarter; and single-track schools), contingent on the assumptions and dependencies specified in sections 9.2.3.7 and 9.2.3.8 materializing.	<p>November 2019</p> <p>Timelines and dependencies to be scoped, scheduled, and agreed upon in the detailed project implementation plan so as to not exceed the scope and budget specified in the contract.</p>
9.2.3.5	Administer student stakeholder survey, Schedule 3C (Applicable to specified multi-track schools; and schools with "wheel courses" and "block scheduling" that change classes at the end of each quarter), contingent on the assumptions and dependencies specified in sections 9.2.3.7 and 9.2.3.8 materializing.	<p>December 2019</p> <p>Timelines and dependencies to be scoped, scheduled, and agreed upon in the detailed project implementation plan so as to not exceed the scope and budget specified in the contract.</p>

<i>The estimated timeline of major tasks that shall be incorporated into the detailed project implementation plan include:</i>		
Section	Tasks, Fall 2019 Administration	Estimated Timeline
9.2.3.6	Distribute student stakeholder survey reports to HIDOE and Charter School principals and teachers complex area superintendents, and state administrators.	<p>February 2020</p> <p>The estimated timeline shall include sufficient time for the STATE to conduct its own quality assurance review of the CONTRACTOR'S reports and data deliverables.</p> <p>Timelines and dependencies to be scoped, scheduled, and agreed upon in the detailed project implementation plan so as to not exceed the scope and budget specified in the contract.</p>

NOTE: A School Year 2019-2020 student calendar has been attached as Exhibit B (for reference purposes). A School Year 2018-2019 multitrack school student calendar has been attached as Exhibit C (for reference purposes) because the School Year 2018-2019 multitrack school student calendar will not be available for all schools and all school tracks until June 2019.

9.2.3.7 Timelines and Dependencies

The timelines specified herein are based on the assumptions and dependencies specified in sections 9.2.3.7 and 9.2.3.8, and the assumptions for online and paper administration of the student stakeholder survey specified in sections 9.2.7.2.1, and 9.2.7.2.2.

Timelines and Dependencies			
Section	Description	Dependencies	Date Required
9.2.3.7.1	Provision of the roster file of the population to be surveyed, to the specification provided, not to exceed the number of surveys specified in section 9.2.7.	Surveys cannot be created or provided unless a valid roster has been provided for processing.	<p>September 2019</p> <p>To be scoped, scheduled, and agreed upon in the detailed project implementation plan so as to not exceed the scope and budget specified in the contract.</p>

Timelines and Dependencies			
Section	Description	Dependencies	Date Required
9.2.3.7.2	Provision of deadlines for the completion of surveys and the return of any paper-based survey materials to print vendor for scanning.	Survey response data processing cannot be scheduled without this information.	December 2019 To be scoped, scheduled, and agreed upon in the detailed project implementation plan so as to not exceed the scope and budget specified in the contract.
9.2.3.7.3	Full set of completed surveys received for processing at scanning facility.	Survey response data cannot be processed without this information.	December 2019 To be scoped, scheduled, and agreed upon in the detailed project implementation plan so as to not exceed the scope and budget specified in the contract.

9.2.3.8 The STATE shall be responsible for supplying data files and other information (e.g., roster files) to an appropriate and predefined level of quality, and within the timelines specified in section 9.2.3.7, in order for the CONTRACTOR to deliver the services specified in the contract.

9.2.4. Tools, Materials, and Support

9.2.4.1. The CONTRACTOR shall provide the pre-printed paper and online access materials for the student stakeholder survey; materials to describe and support online training for complex area superintendents, principals, teachers, and other STATE-identified staff; and administrative and technical support, including online administrative and technical support, for all activities related to the student stakeholder survey and the student stakeholder survey project. Training and technical support shall be scoped, scheduled, and agreed upon in the detailed project implementation plan so as to not exceed the scope and budget specified in the contract.

9.2.4.2. The CONTRACTOR shall also be responsible for all associated tasks as follows:

9.2.4.2.1. Providing the STATE with either:

9.2.4.2.1.1. The standard version of the CONTRACTOR's student stakeholder survey; or

9.2.4.2.1.2. A shortened or customized version of the CONTRACTOR's student stakeholder survey, provided the shortening or customization of the survey does not change the survey's psychometric properties, which shall be cross-walked to Components 2b, 2d, 3b, 3c, and 3d of the *Hawaii Adapted Framework for Teaching – Classroom Observation Rubric, Revised July 2013* (refer to Exhibit A), or evaluation tool agreed upon by the teacher bargaining unit, for other purposes of comparing students' perceptions against school administrators' observations of classroom practice, student engagement and school climate (including items that measure: SEL, school culture, facilities, etc.).

- 9.2.4.2.2. Shipping online-login materials, associated scripts, instructions, and other materials to schools. Instructions, cards, and associated scripts shall be organized into classroom packets based on information provided by the STATE for each participating teacher.
- 9.2.4.2.3. Shipping pre-printed paper surveys, associated scripts, instructions, and other materials to schools. Instructions, cards, and associated scripts shall be organized into classroom packets based on information provided by the STATE for each participating teacher. Each school box shall contain pre-printed shipping labels for returning completed surveys and, if applicable, other materials to the CONTRACTOR.
- 9.2.4.2.4. The STATE shall provide the classroom information specified in section 9.2.5 to the CONTRACTOR in the format specified by the CONTRACTOR.
- 9.2.4.3. If the STATE is unable to provide the classroom information specified in section 9.2.5 to the CONTRACTOR in the format specified by the CONTRACTOR, then the STATE shall provide this classroom information to the CONTRACTOR in the native format of the applicable data systems maintained by the STATE. If the STATE provides the classroom information specified in section 9.2.5 to the CONTRACTOR in the native format of the applicable data systems maintained by the STATE instead of the format specified by the CONTRACTOR, then the expected price, timeliness, quality, and extensiveness of some or all of the deliverables specified in this contract may be adversely affected as stipulated in sections 9.2.3.7 and 9.2.3.8.
 - 9.2.4.3.1. Data exported to the CONTRACTOR shall be limited to the data available in the STATE's Student Information System.
 - 9.2.4.3.2. Data in the STATE's Student Information System shall be defined by the STATE and any changes to data entered by schools to meet the CONTRACTOR's data requirements shall be mutually agreed upon by the STATE and the CONTRACTOR.
 - 9.2.4.3.3. Data collected by the CONTRACTOR's system shall be available for extract by the STATE.
 - 9.2.4.3.3.1. The CONTRACTOR shall provide the STATE with metadata defining the CONTRACTOR'S data, a code book, and all required data files.
 - 9.2.4.3.3.2. The CONTRACTOR shall comply with the STATE's requirement to encrypt data transmissions as specified in section 9.2.4.3.3.4.
 - 9.2.4.3.3.3. The STATE shall notify the CONTRACTOR of any changes to the data exchange process at least 1 month prior to the change. The CONTRACTOR shall be responsible for testing the changes. The STATE shall not be responsible for any errors or problems due to limitations of the CONTRACTOR'S system or testing methodology. Significant changes to the data extraction process for the student stakeholder survey project may adversely impact the price, timeliness, quality, and extensiveness of some or all of the deliverables specified in this contract.
 - 9.2.4.3.3.4. Confidential information electronically transferred outside of the STATE's network through the Internet shall be encrypted according to specifications mutually agreed upon by the STATE and the CONTRACTOR.

- 9.2.4.3.3.5. The CONTRACTOR is not entitled to access the STATE's data systems unless access is granted explicitly in writing by the STATE.
- 9.2.4.3.3.6. Rostering Process (inclusive in base cost)
- The CONTRACTOR shall provide the STATE with a methodology for retrieving roster information from the HDOE Public and Charter School student information systems, or provide an alternative method with written guidance and a standard template, such as Microsoft® Office Excel®.
 - The STATE shall work with schools to ensure that classes surveyed have the minimum number of students specified by the CONTRACTOR whenever possible.
 - The STATE shall work with schools to ensure individual students complete no more than 3 surveys during the fall 2019 administration window whenever possible.
 - The STATE shall interface with all participating schools to populate roster templates with all participating teachers.
 - A single teacher (including an individual teaching in a co-taught classroom) shall be designated as the teacher of record.
 - A roster file shall reflect the specific class period when the student stakeholder survey will be administered. Linkages shall be established for state to complex area, complex area to school, school to teacher, teacher to class period, class period to student.
 - The STATE shall work with schools to ensure that schools designate class periods to complete the grade-appropriate student stakeholder survey.
 - Class levels shall be defined by school type rather than grade spans, e.g., sixth graders in elementary schools are defined as "elementary schoolers" while sixth graders in middle schools are defined as "middle schoolers". The STATE shall provide the CONTRACTOR with a list of schools with irregular grade configurations.
 - The student stakeholder survey shall be delivered in both paper and online format for English and Hawaiian; in online format only for Chuukese, Spanish, Tagalog, Vietnamese, Tongan, Chinese – Simplified and Traditional, Marshallese, Korean, Samoan, Ilocano, Japanese, and Visayan (Cebuano), and four (4) other languages as may be specified by the HDOE; provided that the total number of translations shall not exceed 20 languages, including *Braille* books. A protocol for handling non-English speaking or blind/visually impaired survey-takers shall be agreed upon by the STATE and the CONTRACTOR.
 - If appropriate type or quantity of surveys, or both are not ordered, then a protocol for handling these situations without shipping additional surveys will be utilized. The protocol will also apply to additional *Braille* books that may need to be ordered.
 - The STATE shall submit 1 merged roster file to the CONTRACTOR. The roster file will contain data for multi-track and single track schools. The roster file may be resubmitted at least twice in order to attain an appropriate and predefined level of quality. Additional submissions, however, may result in additional charges.
 - The STATE shall sign off on each survey order prior to the opening of each respective survey administration window. Changes made by the STATE to a survey order after it is submitted or after the opening of its respective survey administration window may result in additional charges and may delay some or all of the deliverables specified in this contract. The timelines and dependencies specified

in sections 9.2.3.7 and 9.2.3.8 shall be scoped, scheduled, and agreed upon in the detailed project implementation plan so as to not exceed the scope and budget specified in this contract.

9.2.4.4. Provide Support to the STATE's EES Help-desk

9.2.4.4.1. The STATE's EES help-desk shall provide first-tier support to complex area superintendents, principals, teachers, and other STATE-identified staff. The CONTRACTOR shall provide second-tier help-desk support to the STATE's EES help-desk, through a toll-free telephone number and by email, before, during, and after the fall 2019 administration of the student stakeholder survey. Unless a change is mutually agreed upon by the STATE and the CONTRACTOR, the CONTRACTOR shall provide "live" help-desk support to the STATE's EES help-desk, complex area personnel, schools, teachers, and other individuals supporting the student stakeholder survey component in the EES from at least 7:30 a.m. to 3:30 p.m. Hawaii Standard Time (not Daylight Savings Time) during the fall 2019 administration window of the student stakeholder survey and at least 2 weeks after report distribution.

9.2.4.4.2. The CONTRACTOR shall provide the STATE with a weekly help-desk update, as needed, for discussion purposes.

9.2.4.5. The CONTRACTOR shall provide consultative support to help the STATE deal with any problems that may arise within the scope of the student stakeholder survey project. A clear scope and timeline shall be established so as to not exceed the timeline and budget specified in the contract.

9.2.4.6. Unless otherwise specified in this contract or mutually agreed upon by the STATE and the CONTRACTOR, the CONTRACTOR shall provide student stakeholder survey data, results, and reports to the STATE by way of flat files in comma/character-separated value (CSV) format.

9.2.4.7. The STATE may ask the CONTRACTOR to provide a reasonable level of input or participation, or both, in groups that represent the STATE's rank and file employees. A clear scope and timeline shall be established so as to not exceed the timeline and budget specified in the contract.

9.2.4.8. The CONTRACTOR shall assist the STATE with the development of key messages regarding the student stakeholder survey for critical audiences. For purposes of this section, assistance includes developing talking points and "Frequently Asked Questions" for STATE leadership, complex area superintendents, principals, teachers, and other STATE-identified staff.

9.2.4.9. The CONTRACTOR shall grant the STATE access to and, if appropriate, use of media that the CONTRACTOR may already have developed in other jurisdictions for purposes of disseminating information about the student stakeholder survey.

9.2.4.10. The CONTRACTOR shall provide the STATE with agreed upon, prerecorded, process and protocol messages for training and instructional purposes.

9.2.5. Student Stakeholder Survey Process and Procedure

9.2.5.1. The CONTRACTOR shall administer the student stakeholder survey process and associated reporting methodology which shall include:

9.2.5.1.1. The provision of a survey instrument that records students' perceptions of classroom practice, student engagement and school climate (including items that

measure: SEL, school culture, facilities, etc.); and uses developmentally–appropriate question metrics that have an established and tested correlation to student achievement;

- 9.2.5.1.2. The comparison of teachers' scores across the state. Separate reports shall also be supplied providing comparative results from the student stakeholder survey national data set, if available;
- 9.2.5.1.3. The management of data files that link complex areas, schools, teachers, and class periods to students; and
- 9.2.5.1.4. The distribution of student stakeholder survey reports by the CONTRACTOR to complex area superintendents, HIDOE Public and Charter School principals and teachers, and other STATE-identified staff after the processing, cleaning, preparation, and analysis of student stakeholder survey data using agreed upon media.

9.2.5.2. Student Stakeholder Survey Procedure

The CONTRACTOR's administration of the student stakeholder survey across the state shall include the following activities and tasks:

- 9.2.5.2.1. Collecting and processing student rosters.
- 9.2.5.2.2. Preparing and paneling online English surveys and online surveys translated into Hawaiian, Chuukese, Spanish, Tagalog, Vietnamese, Tongan, Chinese – Simplified and Traditional, Marshallese, Korean, Samoan, Ilocano, Japanese, and Visayan (Cebuano), and four (4) other languages as may be specified by the HIDOE; provided that the total number of translations shall not exceed 20 languages.
- 9.2.5.2.3. Printing, packing, and shipping paper surveys using businesses physically located in the State of Hawaii, if cost-effective, to reduce shipping time and shipping costs.
- 9.2.5.2.4. Printing and shipping, or electronic delivery of student online login materials using businesses physically located in the State of Hawaii, if cost-effective, to reduce shipping time and shipping costs.
- 9.2.5.2.5. Assisting teachers and school-level student stakeholder survey coordinators with survey administration protocols.
- 9.2.5.2.6. Delivering paper surveys to schools in classroom packets; and delivering student login materials to principals and school-level student stakeholder survey coordinators.
- 9.2.5.2.7. Administering paper and online surveys in the classroom.
- 9.2.5.2.8. Collecting paper surveys and returning them to the CONTRACTOR using businesses physically located in the State of Hawaii, if cost-effective, to reduce shipping time and shipping costs.
- 9.2.5.2.9. Providing second-tier help-desk support throughout the contract period during specified hours.
- 9.2.5.2.10. Scanning completed paper surveys.

- 9.2.5.2.11. Processing and delivering paper and online survey data to the CONTRACTOR.
- 9.2.5.2.12. Appending data deliveries.
- 9.2.5.2.13. Cleaning dataset.
- 9.2.5.2.14. Generating master dataset.
- 9.2.5.2.15. Reconciling data against student rosters.
- 9.2.5.2.16. Formatting and inputting data into CONTRACTOR's student stakeholder survey reporting tool.
- 9.2.5.2.17. Defining student stakeholder survey report specifications.
- 9.2.5.2.18. Creating logins to CONTRACTOR's report management system.
- 9.2.5.2.19. Verifying the accuracy of teacher/student data links, student stakeholder survey data, and student stakeholder survey results before the distribution of reports by the CONTRACTOR to complex area superintendents, principals, teachers, and other STATE-identified staff. The estimated timeline shall include sufficient time for the STATE to conduct its own quality assurance review of the CONTRACTOR's reports and data deliverables.

9.2.6. Development and Delivery of Outputs

The CONTRACTOR shall gather and analyze student stakeholder survey data from 292 HDOE Public and Charter schools and compile these data into reports. These data shall include information about students' perceptions of classroom practice, student engagement and school climate (including items that measure: SEL, school culture, facilities, etc.). The reports shall be provided to decision makers at the state, complex area, school, and classroom level. Each complex area superintendent, principal, and teacher shall receive access to organized feedback related to students' perceptions of classroom practice, student engagement and school climate (including items that measure: SEL, school culture, facilities, etc.) in their complex areas, schools, and classrooms. The deliverables shall include:

- 9.2.6.1. Comprehensive and construct reports for teachers who meet the minimum response requirements established by the CONTRACTOR. The reports shall include:
 - 9.2.6.1.1. Comprehensive tabular views of student responses to student stakeholder survey questions; and
 - 9.2.6.1.2. When available, comparable view of student responses to student stakeholder survey questions over time, in addition to graphical views that anonymously compare a teacher's scores within their school and across the state. A teacher's scores shall take the form of aggregated "favorability" ratings on constructs included in the student stakeholder survey, or an alternative form mutually agreed upon by the STATE and the CONTRACTOR.
- 9.2.6.2. Comprehensive and construct reports for school administrators. The reports shall include:
 - 9.2.6.2.1. Comprehensive tabular views of student responses to student stakeholder survey questions; and
 - 9.2.6.2.2. When available, comparable view of student responses to student stakeholder survey questions over time, in addition to graphical views that anonymously or non-anonymously compare teachers' scores within their school and across the state.

Teachers' scores shall take the form of aggregated "favorability" ratings on constructs included in the student stakeholder survey, or an alternative form mutually agreed upon by the STATE and the CONTRACTOR. The CONTRACTOR shall provide the STATE with a key for purposes of identifying teachers in the reports prepared for school administrators.

9.2.6.3. Comprehensive and construct reports for complex area administrators. The reports shall include:

9.2.6.3.1. Comprehensive tabular views of student responses to student stakeholder survey questions; and

9.2.6.3.2. When available, comparable view of student responses to student stakeholder survey questions over time, in addition to graphical views that anonymously or non-anonymously compare schools' scores across schools within their complex area and across the state. Schools' scores shall take the form of aggregated "favorability" ratings on constructs included in the student stakeholder survey, or an alternative form mutually agreed upon by the STATE and the CONTRACTOR.

9.2.6.4. Comprehensive and construct reports for state administrators. The reports shall include:

9.2.6.4.1. Comprehensive tabular views of student responses to student stakeholder survey questions; and

9.2.6.4.2. When available, comparable view of student responses to student stakeholder survey questions over time, in addition to graphical views that anonymously or non-anonymously compare complex area's scores across the state. Complex area scores shall take the form of aggregated "favorability" ratings on constructs included in the student stakeholder survey, or an alternative form mutually agreed upon by the STATE and the CONTRACTOR.

9.2.6.5. Comprehensive and construct reports from the national data set. If available, the reports for state and school administrators shall include comparative results from and comprehensive tabular views of the national data set of the student stakeholder survey. CONTRACTOR shall use de-identified survey response data for the purpose of creating national benchmarks within the platform. National benchmark reporting is "de-identified", meaning that all reporting is in aggregate and it is not possible for an end user to connect results to a specific student, teacher, school, district, complex, complex area or state.

9.2.6.6. Subject to the availability of funds, the STATE, in consultation with the CONTRACTOR, may request reports, views, and scores not already specified in sections 9.2.6.1 to 9.2.6.4; or may consolidate the reports, views, and scores already specified in sections 9.2.6.1 to 9.2.6.4.

9.2.6.7. A data file containing raw, unprocessed student responses to student stakeholder survey questions in comma/character-separated value (CSV) format.

9.2.6.8. An online mechanism for making the reports specified in section 9.2.6 available to complex area superintendents, principals, teachers, and other STATE-identified staff, as appropriate.

9.2.7. Online Administration of the Student Stakeholder Survey

9.2.7.1. The CONTRACTOR shall provide specifications regarding the hardware and software technology required to support the online administration of the student stakeholder survey statewide.

9.2.7.2. For SY 2019-2020 Costing Purposes.

- 9.2.7.2.1. The STATE and the CONTRACTOR shall assume that approximately twenty-five (25%) of students will take the student stakeholder survey online and approximately seventy-five (75%) of students will take the student stakeholder survey on paper during the fall 2019 administration of the student stakeholder survey.
- 9.2.7.2.2. The CONTRACTOR shall provide at least two hundred twenty thousand (220,000) surveys for at least eleven thousand five hundred (11,500) classes during the fall 2019 administration of the student stakeholder survey.
- 9.2.7.2.3. The STATE and the CONTRACTOR may amend the contract if the assumptions and dependencies specified in sections 9.2.3.7 and 9.2.3.8 do not materialize, or the assumptions for online and paper administration of the student stakeholder survey specified in sections 9.2.7.2.1, and 9.2.7.2.2 exceed the timeline and budget specified in this contract.

9.2.8. Communications and Capacity-Building

9.2.8.1. The CONTRACTOR shall:

- 9.2.8.1.1. Customize, update, and improve existing communication and outreach strategies and materials to describe and support the appropriate use of student stakeholder survey reports by stakeholders and the general public; and develop new strategies and materials in order to accomplish these objectives as necessary. The CONTRACTOR shall produce at least 1 draft of a communications plan and provide the STATE with at least 2 opportunities to edit the same. A clear scope and timeline shall be established so as to not exceed timeline and budget specified in this contract; and
- 9.2.8.1.2. Subject to a mutually agreed upon change in the contract, the availability of funds, and with the prior written approval of the STATE, do all other things deemed necessary and proper by the CONTRACTOR to ensure the appropriate use of student stakeholder survey reports by stakeholders and the general public.

- 9.2.8.2. The CONTRACTOR shall provide technical support (e.g., materials telephone/conference calls, and web-based meetings) with the aim of assisting the STATE in developing the internal capacity of state employees who will fully manage the continued implementation of the student stakeholder survey project after June 30, 2020.

9.3. Continuous Activities

9.3.1. Evaluation

9.3.1.1. The CONTRACTOR shall submit written, monthly status reports on:

- 9.3.1.1.1. The progress of the student stakeholder survey project, clearly identifying any tasks or deliverables that appear to be at risk of not meeting milestones or deadlines; and
- 9.3.1.1.2. 3.3.1.1.2 Any other risks (e.g., low participation rates) related to the purpose of the student stakeholder survey project or those parts of the EES that are dependent on the student stakeholder survey project.

9.3.1.2. The monthly status reports shall include:

- 9.3.1.2.1. Insights and recommendations for improving the outcomes of the student stakeholder survey project;
- 9.3.1.2.2. Assessments of ongoing student stakeholder survey project activities, including activities not specifically enumerated in the contract and activities performed by subcontractors and assignees for the CONTRACTOR;
- 9.3.1.2.3. Assessments of the effectiveness of the CONTRACTOR's detailed project implementation plan, tools, strategies, and materials with respect to the purpose of the EES as specified herein; and
- 9.3.1.2.4. Presentation materials, telephone/conference calls, web-based meetings, and other forms of communication when requested by the STATE or deemed necessary and proper by the CONTRACTOR, subject to the availability of funds.

9.3.2. Data Management

- 9.3.2.1. The CONTRACTOR shall be responsible for the following data management activities and elements as they relate to the student stakeholder survey project:
 - 9.3.2.1.1. Collecting, compiling, and analyzing student stakeholder survey data from the paper and online instruments for the student stakeholder survey;
 - 9.3.2.1.2. Working with school-level student stakeholder survey coordinators, complex area superintendents, principals, and other STATE-identified staff to support the STATE's efforts to ensure that all data collection and pre-survey and post-survey procedures are carried out properly; and
 - 9.3.2.1.3. Aligning and managing the scope, cost, quality, and timeliness of all tasks and activities related to the student stakeholder survey project.

STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

1. TOTAL COMPENSATION

In full consideration of goods delivered and/or services performed by the CONTRACTOR under the terms and conditions of this contract, the STATE agrees to pay the CONTRACTOR the total and complete sum, not to exceed:

FOUR HUNDRED SEVENTY EIGHT THOUSAND SEVENTY TWO AND 00/100 DOLLARS
(\$478,072.00)

The contract price shall include all services, materials, overhead, profit, all applicable taxes, any reimbursement costs, and any other incidental and operational expenses incurred by CONTRACTOR in the performance of its obligations hereunder. The contract price shall be the all-inclusive cost to the STATE and no other charges will be honored.

2. COMPENSATION RATES

Total compensation shall be based on the following:

Enrollment Count		SY 2019-2020 (Projected)*	Cost Per Student	Total Cost
Regular Education (by Grade Levels)	3	13,202	\$3.50	\$46,207.00
	4	13,095	\$3.50	\$45,832.50
	5	10,242	\$3.50	\$35,847.00
	6	12,824	\$3.50	\$44,884.00
	7	12,462	\$3.50	\$43,617.00
	8	11,595	\$3.50	\$40,582.50
	9	13,027	\$3.50	\$45,594.50
	10	11,886	\$3.50	\$41,601.00
	11	10,987	\$3.50	\$38,454.50
	12	9,872	\$3.50	\$34,552.00
Subtotal Regular Education		119,192		\$417,172.00
Special Education (by Grade Bands)	K-6	8,504	\$3.50	\$29,764.00
	7-8	2,877	\$3.50	\$10,069.50
	9-12	6,019	\$3.50	\$21,066.50
Subtotal Special Education		17,400		\$60,900.00
Grand Total Regular and Special Education		136,592		\$478,072.00

3. PAYMENT SCHEDULE

Payment No.	Tasks for SY 2019-2020 Survey Administration	Deadlines and Estimated Payment Dates	Estimated Payment Amount (Not to Exceed)
1	Upon completion of the CONTRACTOR's detailed project implementation plan for the fall 2019 administration of the student survey.	Within ten (10) business days following submission of finalized project implementation plan, with estimated payment to the CONTRACTOR on or about July 30, 2019	10 percent
2	Upon placement of full order details for print-based survey forms, envelopes and online login cards.	By September 20, 2019, with estimated payment to the CONTRACTOR on or about October 20, 2019.	15 percent
3	Upon completion of the fall 2019 administration of the Panorama Student Survey, and upon submission of monthly reports	By December 13, 2019, with estimated payment to the CONTRACTOR on or about January 13, 2020.	25 percent
4	Upon distribution of reports and finalization of the raw data and favorability, NCE, and school climate score files from fall 2019 administration of the Panorama Student Survey.	By February 15, 2020, with estimated payment to the CONTRACTOR on or about March 15, 2020.	25 percent
5	Upon completion of the Panorama Help Desk support for the Panorama reports, and upon submission of monthly reports for November and December 2019, January, and February 2020.	By March 15, 2020, with estimated payment to the CONTRACTOR on or about April 15, 2020.	15 percent
6	Upon the submission of the March, April and May 2020 monthly report and final project summary for SY 19-20	By May 1, 2020, with final payment to the CONTRACTOR on or about June 30, 2020	10 percent

- 3.1. Payment shall be made upon i) satisfactory completion of services as described on Attachment-S1, Scope of Services ii) and receipt of an original invoice based upon the actual number of students and in accordance with the rates described in section 2, Compensation Rates above.
- 3.2. Section 103-10, HRS, provides that the STATE shall have thirty (30) calendar days after receipt of invoice or satisfactory performance of services, to make payment. The STATE will not recognize any requirement established by the CONTRACTOR and communicated to the STATE which requires payment within a shorter period or interest payment not in conformance with statute.
- 3.3. Progress payment shall not be construed as an absolute acceptance of the work done up to the time of the payments, but the entire work is subject to acceptance at the time CONTRACTOR advises STATE that the work is complete.

4. INVOICING

- 4.1. CONTRACTOR shall send an original invoice for each request for payment to:

Department of Education
OS-OSIP-AAB- Accountability Section Office
237 18th Avenue, Room C202
Honolulu, HI 96816

- 4.2. Invoices shall reference the contract number and must have the following information identified: invoice number, date of invoice, CONTRACTOR's name and remittance address, service period covered, and total amount due.
- 4.3. If a copy is submitted as the original, such invoice must bear an original signature certifying that the invoice is being submitted as the original.

5. MULTI-TERM CONTRACT

Funds are available for only the initial term of the contract. Contractual obligation of both parties in each fiscal period succeeding the first is subject to the appropriation and availability of funds. Unit price shall be given for each good or service and that unit prices shall be the same throughout the contract except to the extent price adjustment is allowed. A multi-term contract will be cancelled if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the initial term of the contract and contractor will be reimbursed the unamortized reasonably incurred, nonrecurring costs; however, this does not affect either party's rights under any termination clause of the contract. The State will notify the contractor on a timely basis that the funds are, or are not, available for the continuation of the contract for each succeeding fiscal period.

6. AVAILABILITY OF FUNDS

This contract is subject to the availability of funds. Pursuant to Section 103D-309, HRS, except in certain instances, no contract entered into between the STATE and the CONTRACTOR shall be binding or of any force unless the Chief Financial Officer (CFO) certifies that there is an available unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the contract.

If the contract calls for performance or payment in more than one fiscal year (July 1 to June 30), the CFO may certify only that portion of the total funds allocated to satisfy the STATE's obligations for payments in the current fiscal year. In that event, the STATE will not be liable for the unpaid balance beyond the end of the current fiscal year, and availability of funds in excess of the amount certified shall be contingent upon future appropriations or special fund revenues. All partially-funded contracts shall be enforceable only to the extent that funds are certified as available. The STATE agrees to notify the CONTRACTOR of such non-allocation at the earliest possible time. The STATE shall not be penalized in the event this provision is exercised. This provision is not meant to permit the STATE to terminate the contract in order to acquire similar equipment or services from a third party.

7. ADDITIONAL WORK

Additional work not identified under this Contract, if any, must be authorized by the STATE and approved via issuance of a contract amendment prior to performance of work and pursuant to the applicable terms and conditions stated in the General Conditions attached hereto.

- 7.1. Any reasonable modification of the scope of work which does not materially add to the cost of the work shall be performed without extra payment on account of those changes.
- 7.2. If the scope of work is reduced, the method and schedule of payments, together with the total contract price, will be amended.

8. FINAL PAYMENT

The **final payment** on the contract shall be for services rendered during the billing period just prior to the contract expiration date. In addition to the requirements in the General Conditions, the following shall accompany the final payment invoice:

- 8.1. A tax clearance certificate, not over two months old and with an original green "certified copy" stamp, must accompany the invoice for final payment. In addition to the tax clearance certificate, the

"Certification of Compliance for Final Payment" (DOE Form-22) with an original signature will be required for final payment.

- 8.2. In lieu of the above, CONTRACTOR may also submit an original CERTIFICATE OF VENDOR COMPLIANCE as issued by the State Procurement Office via an online system, also referred to as "Hawaii Compliance Express". Details regarding this online application process can be viewed at: <http://vendors.ehawaii.gov/hce/>.

STATE OF HAWAII
TIME OF PERFORMANCE

1. CONTRACT TERM

Contract shall commence upon full execution of the Contract by the Superintendent of the Department of Education, and shall end on June 30, 2020, subject to the availability of funds as specified in the General Conditions.

2. CONTRACT RENEWAL

The Contract may be extended for not more than two (2) additional twelve-month periods, i) upon mutual written agreement of the parties, ii) prior to expiration and iii) under the same terms and conditions of the original agreement or as negotiated between the HIDOE and the CONTRACTOR. Contract extension(s) shall be contingent upon i) the need for continued services and, ii) funding availability beyond the current fiscal year. As each option(s) to extend is mutually agreed upon, the CONTRACTOR shall be required to execute a supplement to the Contract for each additional period.

3. PERFORMANCE PERIOD

The CONTRACTOR shall complete the work within the time limits specified herein. The time specified herein is the maximum time allowed.

4. CONTRACT EXECUTION

CONTRACTOR shall be required to enter into a formal written contract, and no work is to be undertaken by the CONTRACTOR prior to the commencement date of the 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 official starting date.

STATE OF HAWAII

SPECIAL CONDITIONS

1. SPECIAL CONDITIONS ARE SUPPLEMENTAL

These Special Conditions shall serve to supplement and not replace the General Conditions; both documents remain part of this Contract with full force and effect. In the case of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control to the extent necessary to resolve the conflict.

2. OWNERSHIP OF DOCUMENTS

General Conditions paragraph 26 entitled "Ownership Rights and Copyright" is deleted entirely and replaced with the following:

All documents and reports and student data/records developed or generated under this contract shall be the sole property of the STATE. CONTRACTOR retains ownership of any proprietary or copyrighted materials, data, software, technologies, test items, test forms that are previously developed, owned and/or copyrighted by the CONTRACTOR and used or adapted for use under this contract.

3. CONFIDENTIALITY OBLIGATIONS

The following serves to supplement provision 24 of the General Condition, entitled "Confidentiality of Material" and provision 42, entitled "Confidentiality of Personal Information":

- 3.1. Obligations Confidential Information: Infrastructure. The Offeror must agree to keep confidential and not disclose any information relating to the State's information processing infrastructure. This includes but is not limited to, all data, computer hardware, computer software, network designs, network diagrams, firewalls and other security infrastructure, and Internet protocol (IP) addresses.
- 3.2. General Confidentiality Obligations. While performing under this Agreement, the CONTRACTOR may receive, be exposed to or acquire confidential information. Such information may include names, addresses, telephone numbers, birthdates, social security numbers, medical information, and other educational, student, or personal employment information. The information may be in written or oral form, fixed in hard copy or contained in a computer data base or computer readable form. Hereinafter, such language shall be collectively referred to as "Confidential Information."

The CONTRACTOR, including its employees, agents, representatives, and assigns shall abide by the following with regards to Confidential Information:

- (i) They shall not disclose to any unauthorized party any Confidential Information, except as specifically permitted by the HIDOE and subject to the STATE's limitations on confidentiality of information and relevant legal requirements of the STATE to include, but not limited to the Family Educational Rights and Privacy Act ("FERPA"). Permission will be granted through a formal written agreement concerning the disclosure of personally identifiable information (PII) from student education records, signed by HIDOE and the CONTRACTOR, and must be provided as an attachment to this contract;
- (ii) They shall only permit access to Confidential Information to employees, agents, representatives, and assigns having a specific need to know in connection with performance under this Agreement; and
- (iii) They shall advise each of their employees, agents, representatives, and assigns of their obligations to keep such Confidential Information confidential.

The CONTRACTOR, its employees, agents, representatives, or assigns shall ensure the security of the Confidential Information. The CONTRACTOR shall provide the HIDEOE with a list of individuals (by name and position) who are authorized to handle the Confidential Information (hereinafter referred to as "Authorized Handlers"). Authorized Handlers shall ensure the security of the Confidential Information. Only Authorized Handlers shall have access to the Confidential Information, which will be kept on password protected computers with the hard copy documents kept in a locked file cabinet. The CONTRACTOR shall ensure that procedures exist to prohibit access to the Confidential Information by anyone other than an Authorized Handler.

The CONTRACTOR will be responsible for safeguarding the confidentiality of all Confidential Information it receives from the HIDEOE and shall safeguard and protect such documents from unauthorized use, handling, or viewing. The CONTRACTOR shall be liable to the HIDEOE and to any person whose records the CONTRACTOR receives custody of under this Contract for records protection for any unpermitted release, viewing, or loss of such records. The CONTRACTOR shall assume liability responsibility for records protection and for the inappropriate or unlawful release of Confidential Information. The CONTRACTOR shall return all documents containing Confidential Information upon completion of the services CONTRACTOR is contracted to provide under this Agreement.

- 3.3. Prior Written Approval. The CONTRACTOR may not i) share Confidential Information or any other data received under this Contract, ii) publish, or iii) distribute such information without the prior written approval of the STATE.
- 3.4. In the event of termination of this Contract, the CONTRACTOR shall return to the STATE all student information received under this Contract and further agrees to destroy any and all copies of, or references to, any student information shared by STATE as a result of this Contract.

4. APPROVALS

This Agreement is subject to the approval of the Department of the Attorney General as to form, and to all further approvals, including the approval of the Governor, required by statute, regulation, rule, order, or other directive.

GENERAL CONDITIONS

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GENERAL CONDITIONS

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

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

3. Personnel Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Termination for Default.

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

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

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

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

14. Termination for Convenience.

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

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

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

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

- d. Compensation.

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

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

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

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

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

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

- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.

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

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

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

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

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

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

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

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

20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:

- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

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

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

21. Price Adjustment.

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

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

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

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

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.

24. Confidentiality of Material.

- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
- b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

26. Ownership Rights and Copyright. ~~The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.~~ *8/20/18 JER 4-16-19 KM*

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.