CONTRACT NO. CT-DCS-«Contract_Number»

This GRANT AGREEMENT ("AGREEMENT" or "Agreement"), made and entered into on _____, by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation existing under and by virtue of the laws of the State of Hawai'i, with offices at Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813, hereinafter called the "CITY" (or "City") and [Grantee's Legal Name], whose address is «Street_Address» «City» «State» «Zip», hereinafter called the "GRANTEE" (or "Grantee").

WITNESSETH THAT:

WHEREAS, Section 9-205, Revised Charter of the City and County of Honolulu, as amended, ("RCH"), Chapter 6, Article 52, Revised Ordinances of Honolulu 2021, as amended ("ROH") and City Council Resolution No. 20-263, CD1, as amended by City Council Resolution No. 24-118, establish priorities and procedures for the administration of, and expenditure of funds awarded from, the "Grants in Aid Fund," establish standards for the appropriation of public funds to charitable non-profit organizations that provide services to those populations which the CITY has determined to be economically and/or socially disadvantaged or provide services that the CITY has determined to be for public benefit in the areas of the arts, culture, economic development or the environment; and

WHEREAS, pursuant to Section 103D-102(b)(2)(A) of the Hawaii Revised Statutes ("HRS"), as amended, the services under this Agreement are exempt from Chapter 103D, HRS; and

WHEREAS, City Council Ordinance No. XX-XX appropriated funds of «DOLLAR_AMOUNT» AND NO/100 DOLLARS («Final_Award») ("Grant Amount") for the Grant Activity to be provided by the GRANTEE (the "Grant"); and

WHEREAS, the term "Grant Activity" shall be interchangeable and synonymous with the terms "project" or "projects" used in ROH Chapter 6, Article 52.4 (d) and shall without limitation include the project, program, services or activity for which the Grant is awarded, as further outlined in Appendix A: Final Grant Proposal, Budget, and Schedule; and

WHEREAS, the GRANTEE is willing and able to provide the services set forth in this Agreement;

NOW, THEREFORE, the CITY and the GRANTEE, in consideration of the foregoing and of the mutual promises hereinafter set forth, the sufficiency and adequacy of which are hereby acknowledged, and intending to be legally bound, hereby mutually agree as follows:

1. This Contract and the following documents, appendices and exhibits collectively form this Agreement or the "Contract Documents," all of which are attached hereto and incorporated herein:

This Contract

Appendix A: Final Grant Proposal, Budget, and Schedule

Appendix B: Special Provisions

Appendix C: Scope of Work

Appendix D: Term

Appendix E: Funding

Appendix F: General Terms and Conditions

The Contract Documents as listed hereinabove are in the order of controlling preference should there be any conflict in the terms provided.

2. The GRANTEE shall furnish all services, labor, goods, materials, supplies, equipment and other incidentals reasonably necessary for the successful completion of the work contemplated under this Agreement.

3. Subject to all of the provisions set in this Agreement, the CITY agrees to grant to the GRANTEE the Grant Amount in a total sum not to exceed «DOLLAR_AMOUNT» AND NO/100 DOLLARS («Final_Award») for actual costs incurred for the Grant Activity.

4. The term of this Agreement shall commence as provided in Appendix D: Term.

5. The GRANTEE will execute said work in an efficient manner so as entirely to complete and perform said work within the time set forth in Appendix D: Term.

6. Any notice required or permitted by the provisions of this Agreement to be made shall be written and transmitted to the other party at the mailing address or e-mail address specified below, and to the person designated by each party. No other method of notification shall be effective. The parties designate the following for notices:

When notice is to be given to the CITY, it shall be transmitted to:

Director
Department of Community Services
City and County of Honolulu
222 North School Street
Honolulu, Hawaii 96817
E-mail: DCSOGM@honolulu.gov

When notice is to be given to the GRANTEE, it shall be transmitted to:

ATTENTION:
«Execution_Title» «Execution_First_Name» «Execution_Last_Name»
«Title»
«Street_Address»
«City», «State» «Zip»

[Remainder of Page Left Blank Intentionally]

IN WITNESS WHEREOF, this Agreement is executed herein by the duly authorized officers or agents of the CITY and the GRANTEE.

CITY AND COUNTY OF HONOLULU	[Grantee's Legal Name]
BY:	BY:
PRINTED NAME:	PRINTED NAME:
TITLE: Director, Department of Budget and Fiscal Services	TITLE:
DATE:	DATE:

APPROVED AS TO CONTENT:

Anton C. Krucky, Director
Department of Community Services
City and County of Honolulu

APPROVED AS TO FORM AND
LEGALITY:

Deputy Corporation Counsel
City and County of Honolulu

APPENDIX A: FINAL GRANT PROPOSAL, BUDGET, AND SCHEDULE

[RESERVED FOR COMPLETION AFTER THE CONDITIONAL GRANT AWARD]

APPENDIX B: SPECIAL PROVISIONS

RESERVED

APPENDIX C: SCOPE OF WORK

I. SCOPE OF SERVICES

The GRANTEE shall carry out or cause to be carried out (in the case where the GRANTEE is a Fiscal Sponsor) the Grant Activity in accordance with Appendix A: Final Grant Proposal, Budget, and Schedule.

Prior to entering into this Agreement, the GRANTEE shall have provided, to the sole satisfaction of the CITY's Director of the Department of Community Services or authorized designee ("DCS Director"), examples of substantiating documentation related to meeting Grant-related performance deliverables, and such substantiating documentation shall be listed in Appendix A: Final Grant Proposal, Budget, and Schedule as a requirement for payment under this Agreement. Accordingly, the GRANTEE shall provide such substantiating documentation as evidence of the Grant Activity taking place when presenting requests for payment in accordance with this Agreement.

Substantiating documentation should be such that a reasonable disinterested party would declare agreed upon deliverables performed sufficiently based on a review of such documentation. Examples include but are not limited to the following: Attendance sheets signed by attendees, certified reports generated by a computer database system, certified verification by independent source, and independent media accounts of events.

II. NON-PERFORMANCE

In the event the GRANTEE does not during the Grant Term carry out, or cause to be carried out (in the case where the GRANTEE is a Fiscal Sponsor), the Grant Activity in accordance with Section I. SCOPE OF SERVICES, the GRANTEE will be deemed in breach of this Agreement.

III. MODIFICATION OF SERVICES SCOPE AND BUDGET

A. The GRANTEE shall request and obtain, in writing, the prior approval of the DCS Director for every modification/budget revision alleged to be necessary for any of the following reasons:

1. Changes in the scope, objective, or schedule of the Grant Activity provided that such changes do not differ materially from what was approved by City Council. Non-material changes include, but are not limited to, reductions in the scope of the Grant Activity that are accompanied by proportional reductions in Grant funding or increases in a Grant Activity category to offset a reduction in another Grant Activity category.

2. Changes to approved subgrants.

3. Transfer of expenditures to an unbudgeted line item.

4. Budget category expenditure variances which cumulatively exceed ten percent (10%) of the total Grant Amount. Example: If the Grant Amount is

$10,000.00, cumulative variances over $1,000.00 require approval. The GRANTEE must not exceed the Grant Amount.

5. Any additions or deletions to the equipment purchases included in the approved application.

B. Unless otherwise approved by the DCS Director, all requests for scope and budget modifications/revisions must be received by the Department of Community Services ("DCS") no later than ninety (90) calendar days prior to the Grant Activity end date. Late requests may not be considered.

1. Every scope and budget modification requested no later than the 90-day calendar period prior to the Grant Activity end date and approved by the DCS Director shall be incorporated into this Agreement without the need for an Amendment to be executed by both parties. The most current modification shall take precedence over any previous modification should any conflict exist.

2. For every scope and budget modification requested other than prescribed in subsection A above, the modification shall be effectuated by written amendment and signed by both parties.

C. When requesting approval of a proposed Agreement scope and budget modification/revision, the GRANTEE shall revise the appropriate sections of Appendix A: Final Grant Proposal, Budget, and Schedule, and provide a narrative explaining the change(s) and describing the justification for such change(s).

D. If the GRANTEE is a Fiscal Sponsor, then the Sponsored Organization shall affirm any revision agreed upon between the GRANTEE and the CITY.

IV. MODIFICATIONS OF GRANT ACTIVITY SCHEDULE

The CITY shall not be responsible for any costs incurred by the GRANTEE outside of the Grant Activity schedule agreed upon in Appendix A: Final Grant Proposal, Budget, and Schedule.

However, the Grant Activity end date may be extended for up to a six (6) month period without the need for an amendment. Any extension of the Grant Activity end date shall be subject to the availability of funds, and at the DCS Director's sole discretion. Furthermore:

A. The GRANTEE shall request and obtain, in writing, the prior approval of the DCS Director for the extension. The DCS Director's decision shall be final.

B. Unless otherwise approved by the DCS Director, all requests for extensions must be received by the DCS Director no later than ninety (90) calendar days prior to the expiration of the Grant Activity end date. Late requests may not be considered.

1. Every Grant Activity schedule modification requested no later than the 90-day calendar period prior to the Grant Activity end date and approved by the DCS Director, shall be incorporated into this Agreement without the need for a written amendment to be executed by both parties. The most recent modification shall take precedence over any previous modification should any conflict exist.

2. For every Grant Activity schedule modification requested other than prescribed in subsection A above, the modification shall be effectuated by written amendment and signed by both parties.

C. When requesting extension of the Grant Activity end date, the GRANTEE shall revise the appropriate sections of Appendix A: Final Grant Proposal, Budget, and Schedule, and provide a narrative explaining the change(s) and describing the justification for such change(s).

D. If the GRANTEE is a Fiscal Sponsor, then the Sponsored Organization shall affirm any change(s) agreed upon between the GRANTEE and the CITY.

APPENDIX D: TERM

I. GRANT TERM

Unless otherwise provided herein, this Agreement shall be effective from the date of execution herein first written above by the parties, and shall remain in effect for eighteen (18) months from the official Notice to Proceed ("NTP") date issued by the CITY ("Grant Term"). The Grant Term and the provisions herein shall be extended to cover any additional time period during which the GRANTEE remains in control of any portion of the Grant Amount.

All activities and services required by this Agreement shall be completed after the NTP date and before the Grant Activity end date specified in Appendix A: Final Grant Proposal, Budget and Schedule.

The CITY may increase the Grant Term through a written amendment executed by both parties. In this situation, the GRANTEE shall revise the appropriate sections of Appendix A: Final Grant Proposal, Budget, and Schedule, and provide a narrative explaining the change(s) and describing the justification for such change(s).

I. COMMENCEMENT OF WORK/NOTICE TO PROCEED

The GRANTEE shall not perform or allow the performance of (in the case where the GRANTEE is a Fiscal Sponsor) any services required by this Agreement, or incur costs under this Agreement, until this Agreement has been executed by all parties and not before the NTP date issued to the GRANTEE by the CITY. Costs incurred before the NTP date are not allowable and will not be paid.

The GRANTEE acknowledges that the CITY will not issue a NTP until the CITY has completed the appropriate environmental review as required under HRS Chapter 343.

APPENDIX E: FUNDING

I. GRANT AMOUNT

Subject to all of the provisions set in this Agreement, the CITY agrees to grant to the GRANTEE the Grant Amount, for actual costs incurred for the Grant Activity.

The CITY may increase funding to this Agreement through a written amendment executed by both parties. In this situation, the GRANTEE shall revise the appropriate sections of Appendix A: Final Grant Proposal, Budget, and Schedule, and provide a narrative explaining the change(s) and describing the justification for such change(s).

II. REPORTS AND DISBURSEMENTS

Grant funds shall be requested and disbursed as follows:

Advance payment – Only after the Notice to Proceed is issued, the GRANTEE may request an initial payment of eighty percent (80%) of the Grant Amount on an advance payment basis for actual costs associated with the Grant Activity.

The GRANTEE shall substantiate that such payment is for allowable costs with its final payment request under subsection B below, supported by documentation as further described below.

A. All reports shall be submitted to the Director, Department of Community Services, City and County of Honolulu, 222 North School Street, Honolulu, Hawaii 96817.

1. Substantiating documentation includes but is not limited to:

a. Evidence that the contracted Grant Activity:

i. Directly benefitted the target population for the Grant; and

ii. Was achieved according to timelines, measurable milestones and/or specific events tied to the Grant Activity's objectives.

b. Budget report documenting actual versus budgeted expenses.

c. Information necessary to determine that the GRANTEE has provided deliverables promised under this Agreement.

d. Information necessary to determine that the GRANTEE's costs were actually incurred and allowable under this Agreement.

2. The GRANTEE shall be required to retain receipts and accounting records, and provide substantiating documentation for up to six (6) years after the final payment has been paid. The CITY may randomly audit financial documentation of any GRANTEE. Therefore, supporting records must be maintained and readily available upon request by the CITY.

3. Prior to entering into this Agreement, the GRANTEE shall have provided to the DCS Director's sole satisfaction, examples of substantiating documentation related to meeting Grant related performance deliverables, and such substantiating documentation shall be incorporated into Appendix A: Final Grant Proposal, Budget, and Schedule as a requirement for payment under this Agreement.

   Documentation shall be such that a reasonable disinterested party would declare that the agreed-upon deliverables were performed by GRANTEE sufficiently based on a reasonable review of such documentation. Examples include, but are not limited to, the following: Attendance sheets signed by attendees, certified reports generated by a computer database system, certified verification by independent source, and independent media accounts of events.

B. Final payment – A final payment of the available balance of the Grant Amount will be paid upon the GRANTEE's submission to the DCS Director of a Final Report and substantiating documentation, but will be withheld until final settlement of the Grant. Final payment will be made after the successful completion of the Grant Activity or otherwise successful fulfillment of the Grant's purposes, provided, however, the same procedures apply as defined in this Section, and in addition, the following must also be submitted to and approved by the DCS Director in his or her sole discretion:

   1. The "Final Report" which includes the FINAL REPORT COVER SHEET, FINAL NARRATIVE REPORT, and FINAL FISCAL REPORT as provided by DCS.

      a. The Final Report shall be signed by an authorized signatory of the GRANTEE, who will be subject to personal liability and penalty under applicable law, will certify:

         i. Signor is authorized to sign the Final Report;

         ii. Signor personally prepared or reviewed the matters found in the Final Report (including any related documents/attachments),

         iii. Costs incurred and described in the Final Report are valid, consistent with terms of this Agreement, and prepared and calculated in accordance with Generally Accepted Accounting Principles ("GAAP"),

         iv. Non-cost matters described in the Final Report are true, accurate and complete as of the signing, and

         v. Signor has the requisite skills and knowledge to assert the foregoing certifications

      b. The Final Report shall be approved and funds for allowable costs disbursed in accordance with the approved budget as provided in Appendix A: Final Grant Proposal, Budget, and Schedule.

c. The Final Report shall be supported with substantiating documentation of performance, including, but not limited to, a full accounting of all Grant funds awarded and accomplishment of the Grant Activity, and must in form and substance be approved by the DCS Director in his or her sole discretion.

2. A current Certificate of Vendor Compliance showing compliance.

3. A signed and notarized Non-Gratuity Affidavit.

4. The GRANTEE must submit the Final Report within ninety (90) calendar days following the successful completion of the Grant Activity or otherwise successful fulfillment of the Grant's purposes. Unless approved by the DCS Director, the GRANTEE shall forfeit the remaining Grant balance if Final Report is not submitted by the 90-day deadline.

III. ALLOWABLE COSTS

The only payments shall be those for allowable costs in the approved budget. Allowable costs are defined as being those costs actually incurred, and reasonable and allocable to the Grant.

A. Reasonable: A cost is considered to be reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.

B. Allocable: A cost is considered to be allocable if related to the scope of services or outcomes provided in the Grant Proposal, where such services or outcomes have directly benefited the target population for the Grant, and services or outcomes have been successfully achieved.

C. Indirect costs shall amount to no more than five percent (5%) of the Grant Amount.

D. All costs shall be determined in accordance with GAAP.

E. To the extent permitted by law, costs incurred in connection with the pursuit of any claim, including administrative proceedings, against the City are unallowable.

F. The final authority to determine the successful completion (or portions thereof) of the Grant Activity or otherwise successful fulfillment of the Grant's purposes shall rest with the DCS Director.

IV. OTHER PAYMENT TERMS

A. Withholding of Payments. The DCS Director may withhold any and all payments to the GRANTEE if the costs set forth in the FINAL REPORT are unreasonable or does not otherwise comply with the terms of this Agreement. DCS staff shall inform the GRANTEE in writing of the necessary steps to be taken to correct any failure to comply with this Grant. The GRANTEE shall have ten (10) working days in which to respond with a plan agreeable to the DCS Director for correction of

the deficiencies. If no corrective action is taken, the DCS Director may take such action to the extent authorized by the Grant, this Agreement or by law.

B. Repayment. When required to do so in writing, the GRANTEE shall repay the CITY for any amounts disbursed that the DCS Director determines were not used for authorized purposes, or were used in violation of county, state, or federal statutes, ordinances, regulations, or guidelines. The DCS Director may also withhold such amounts from any allowable payment request of the GRANTEE. If such amounts remain unpaid, the DCS Director may take such action to the extent authorized by the Grant, this Agreement or by law. Additionally, non-payment will negatively impact the GRANTEE's ability to receive future funding from the CITY.

C. Receipt of other Grant Funds for CITY-Funded Grant Activities. In the event the GRANTEE receives other grant funds for CITY-Funded Grant Activities, the GRANTEE shall only charge each funding source once for all expenses incurred in completing the Grant Activities. Example: If a GRANTEE has two (2) funding sources, including the GIA Grant, and it incurs $100.00 for paper used to complete the Grant Activity, the GRANTEE may not charge more than a total of $100.00 to either or both grants.

D. Assignment of Money Due or Payable. No assignment of money due or to become due to a GRANTEE from the CITY shall be made without prior written consent of the DCS Director.

V. AUTHORIZED SIGNATORIES

The GRANTEE shall provide a list of all personnel authorized to be a signatory for the organization. This list shall have been furnished to the DCS Director upon execution of this Agreement.

VI. PAYMENT SUBJECT TO AUDIT

Payments made to the GRANTEE are subject to review, later verification and subsequent audit by the CITY. A final financial and compliance audit may be initiated up to six (6) years after the final payment has been paid or until the after the final audit has been completed, whichever is later. This provision survives termination of this Agreement.

Prior to entering into this Agreement, the GRANTEE shall have provided to the DCS Director's sole satisfaction, a listing of substantiating documentation (e.g. detailed receipts, invoices, payroll statement), the GRANTEE will produce, upon the DCS Director's request, documentation justifying allowable costs within the stated period.

When audits disclose overpayments to the GRANTEE, the CITY may, at its option, either require the GRANTEE to repay the overpayment by the CITY or deduct the amount of overpayment from monies due the GRANTEE under this Agreement or under any other Agreement between the GRANTEE and the CITY. Any overpayments not repaid through actual repayment or by deduction within thirty (30) calendar days of notice to the GRANTEE shall be charged simple interest at ten percent (10%) per

annum. The thirty (30) calendar day notice of repayment or deduction shall commence upon mailing of written notice to the GRANTEE.

APPENDIX F: GENERAL TERMS AND CONDITIONS

I. RESTRICTIONS ON GRANT FUNDS

In using CITY grant funds, the following restrictions shall apply:

A. All organizations will be welcomed to participate in any event funded in whole or in part with the grant funds, subject to reasonable, viewpoint-neutral, non-discriminatory conditions for participation in the event, including, but not limited to, conditions relating to the theme or purpose of the event, the number of participants, and the duration of the event.

B. No organization will be denied the right to participate in any event funded in whole or in part with the grant funds, based upon the viewpoint of the organization or on the basis of race, color, religion, ancestry, national origin, disability or handicap, age, marital/familial status, or sex (including gender identity or expression, sexual orientation, or pregnancy), or any other applicable area protected by law, with regard to public assistance and access to programs or activities.

C. No event funded in whole or in part with the grant funds may be predominately religious in nature or advance or inhibit religion.

II. MANDATORY GRANT MANAGEMENT TRAINING

A. The GRANTEE shall be required to attend a grant management training session conducted by DCS, unless the DCS Director approves the GRANTEE's excusal from attending such session.

III. RECORDKEEPING/FINANCIAL MANAGEMENT SYSTEM

The GRANTEE shall maintain a financial management system that, at all times, provides the following:

A. Accurate, current and complete disclosure of all financial activities related to this Agreement, in accordance with GAAP.

B. Records that clearly identify the source and application of all funds used for the purposes described in the approved grant application.

C. Records that document compliance with the requirements of this Agreement, which shall include, but not be limited to, the following:

1. Records providing a full description of each activity undertaken; and the amount of CITY funds budgeted, obligated, and expended for the activity;

2. Records required to document the acquisition, improvement, use or disposition of any real property acquired or improved with CITY assistance;

3. Records documenting compliance with the equal opportunity components of this Agreement;

4. Financial records as required by this Agreement, and

5. Other records necessary to document compliance with this Agreement.

D. Effective internal and accounting controls over all funds, property and other assets.

E. A comparison of actual outlays with budgeted amounts. Financial information shall be correlated with performance and productivity data.

F. Accounting records that are supported by source documentation.

G. Procedures for determining the reasonableness and allowability of costs in a manner that is consistent with this Agreement.

IV. INSPECTIONS AND MONITORING

A. During normal business hours, all of the GRANTEE's records relating to this Agreement shall be made available for examination by the City Council, any Committee of the City Council, the CITY and/or their representatives.

B. The GRANTEE will permit the CITY to audit, examine, and make excerpts and transcripts from such books and records, and to make audits of all payment requests, invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement. The GRANTEE shall maintain such data and records in an accessible location and condition for a period of not less than six (6) years after final payment under this Grant or until after final audit has been resolved, whichever is later. The CITY acknowledges that the documents and records presented for inspection may be the GRANTEE's confidential information.

C. The books, records, and documents shall be subject at all reasonable times to inspection, review, or audit by the CITY, or any duly authorized agent or representative of the CITY. The CITY acknowledges that the documents and records presented for inspection may be the GRANTEE's confidential information and will adhere to the CITY's policy regarding the handling of and access to such information, if provided to the CITY by the GRANTEE.

D. The GRANTEE shall monitor the performance of all activities undertaken pursuant to this Agreement to assure that time schedules are being met, projected outcomes are being accomplished and other performance goals, as defined in the approved Grant Proposal, attached hereto and made a part hereof which is part of this Agreement, are being achieved.

E. The GRANTEE shall inform the DCS Director, in writing, of all conditions that may negatively affect or are negatively affecting program objectives or performance as soon as they are known. These conditions include but are not limited to circumstances and problems that prevent the meeting of time

schedules and goals or preclude the attainment of projected outcomes within established time periods. The disclosure shall be accompanied by a statement of the action taken or contemplated by the GRANTEE to correct the problems and the time frame within which corrective action will be taken.

F. The CITY may, at any reasonable time, make site visits to:

1. Review program accomplishments and management and financial control systems; or

2. Provide technical assistance.

G. On a monthly basis until the final report for this CITY funded activity is accepted by the DCS Director, the DCS Director will make a determination as to whether the GRANTEE (a) has complied with the terms of this Agreement; and (b) has the continuing capacity to complete the CITY funded activities in a timely manner. The DCS Director may withhold payments to the GRANTEE if the DCS Director determines the GRANTEE has not complied with the terms and conditions of this Agreement or the GRANTEE does not have the capacity to complete the Grant Activity in a timely manner.

H. The DCS Director may, at any time, require that the GRANTEE provide such other information as is deemed necessary by the DCS Director to enable it to fully monitor this Agreement.

V. COMPLIANCE

The GRANTEE shall, at all times, comply with all federal, state and local laws, ordinances and regulations that are in any manner applicable to the activities performed by the GRANTEE, its agents, subgrantees (including sponsored organizations) and employees pursuant to this Agreement. The GRANTEE shall cause its agents, subgrantees (including sponsored organizations) and employees to observe and comply with all such laws, ordinances, and regulations and shall protect and indemnify the CITY and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance or regulation, whether by itself or its agents, subgrantees or employees. This section shall survive the expiration or termination of this Agreement.

In cases where federal, state and local laws, ordinances and regulations address similar issues, the GRANTEE shall comply with and enforce the most stringent law, ordinance, or regulation.

The GRANTEE shall also comply with such other requirements as the DCS Director may prescribe to ensure quality in the Grant Activity provided by the GRANTEE. In addition, the GRANTEE shall keep all Grant monies financially separate in its book of accounts.

VI. REPRESENTATIONS AND WARRANTIES

The GRANTEE represents and warrants that:

A. GRANTEE Conduct. The GRANTEE will perform or cause to be performed (in the case where the GRANTEE is a Fiscal Sponsor) all activities in connection with the Grant and Grant Activity in a safe and prudent manner.

B. Non-Profit Organization. The GRANTEE is a Charitable Non-Profit Organization, defined as an organization that can establish that it:

1. Is exempt (or would be qualified for an exemption) from federal income tax pursuant to Section 501 of the United States Internal Revenue Code; and

2. Is organized and operated exclusively for religious, charitable, scientific or educational purposes on a non-profit basis in which no part of the net earnings of the organization inures to the benefit of any private individuals.

C. No Obligations in Arrears. The GRANTEE or any principal of the GRANTEE or sponsored organization (where the GRANTEE is a Fiscal Sponsor) is not in arrears on any financial or other obligation owed to the CITY.

D. Grant Proposal. All statements made in the Grant Proposal were true, accurate and complete as of the date of the Grant Proposal, and continue to be true, accurate and complete as of the date herein first written above.

If the GRANTEE is a Fiscal Sponsor, the GRANTEE, as Fiscal Sponsor, further represents and warrants that:

A. The GRANTEE agrees to sponsor the Grant Activity and to assume administrative, programmatic, financial, and legal responsibility under this Agreement and under any other requirements imposed by the CITY.

B. The Sponsored Organization's Grant Activity is compatible or consistent with the GRANTEE’s mission or purpose.

C. The Grant Activity shall be operated in a manner consistent with the GRANTEE's tax-exempt status and as described in this Agreement.

D. The GRANTEE agrees that it is responsible for monitoring and controlling the expenditure of Grant funds in keeping with the purpose of the Grant.

E. The GRANTEE formally approved and adopted the Grant Activity, as conducted by the Sponsored Organization. In doing so, the GRANTEE

1. Reviewed the Grant Activity; and

2. Passed a board resolution approving and adopting the Grant Activity, and authorizing the GRANTEE to be “Fiscal Sponsor” for the Sponsored Organization.

F. The GRANTEE has had an opportunity to review this Agreement and consult with counsel, and understands it is responsible for complying with all of the terms

of this Agreement, including but not limited to those governing financial, programmatic and administrative matters.

VII. NONCOMPLIANCE, SUSPENSION AND TERMINATION

A. If the GRANTEE refuses or fails to perform any provision of the Grant or this Agreement with such diligence as will ensure its satisfactory completion within the time specified in the Grant or this Agreement, or any extension thereof; OR

If the GRANTEE otherwise fails to timely satisfy any requirement of the Grant or this Agreement; OR

If the DCS Director determines that the GRANTEE has made a material misrepresentation in connection with this Agreement or any payment request hereunder; OR

If the GRANTEE materially fails to comply with any term or condition of the Grant or this Agreement, whether stated herein or materially fails to comply with any applicable county, state, or federal statutes, ordinances, regulations, or guidelines; OR

If the GRANTEE shall become bankrupt, or abandons the Grant Activity or suspends performance of this Agreement,

THEN, the DCS Director may, at its sole discretion, take any one or more of the following actions:

1. Withhold cash payments pending prompt correction of the deficiency by the GRANTEE;

2. Disallow all or part of the cost of the activity or action not in compliance;

3. Suspend or terminate, wholly or partially, the current award of this Agreement with the GRANTEE;

4. Withhold additional grants and awards to the GRANTEE; and

5. Terminate this Agreement without service or notice or legal process and without prejudice to any other legally available remedy or right of action, including, but not limited to, the right to demand and enforce repayment by the GRANTEE or any liable signatory of any amounts paid hereunder that the DCS Director later determines upon audit to lack adequate substantiating documentation or to otherwise have been made while the GRANTEE was in breach of the terms of this Agreement.

B. Upon termination of this Agreement, all finished or unfinished documents, data, studies, and reports purchased or prepared by the GRANTEE for the Grant Activity shall be transferred to the CITY.

C. This Agreement may also be terminated in whole or in part by the CITY with the consent of the GRANTEE, in which case the parties shall agree upon termination

conditions, including the effective date and in the case of partial termination, the portion to be terminated. In all cases of partial termination, if the CITY determines that the remaining portion of this Agreement will not accomplish the purposes for which this Agreement was made, the CITY will terminate this Agreement in its entirety.

D. The costs to the GRANTEE resulting from the obligations incurred by the GRANTEE during suspension or after termination of this Agreement are not allowable unless the CITY authorizes such costs in the notice of suspension or termination issued to the GRANTEE.

E. The GRANTEE's cost during the suspension or after termination which are necessary and not reasonably avoidable, are allowable if the costs: (a) resulted from obligations which were properly incurred by the GRANTEE before the effective date of suspension or termination, (b) were not incurred in anticipation of the suspension or termination, and (c) in the case of termination, are non-cancellable.

F. Determination of eligible GRANTEE costs during suspension or after termination of this Agreement shall be made solely by the DCS Director.

G. Notwithstanding termination of the Grant and this Agreement, and subject to any direction from the CITY, the GRANTEE shall take timely, reasonable, and necessary action to protect and preserve property in which the CITY has an interest.

VIII. INDEMNIFICATION

A. The GRANTEE shall hold harmless, defend, and indemnify the CITY and its officers, employees, and agents, individually and in their official capacities, from all claims of liability for damages made by any person or entity for death, personal injury, or injury to real or personal property arising from or connected with the performance of the GRANTEE's officers, directors, partners, employees, contractors, agents of its own or other entities (including sponsored organizations), or anyone for which the GRANTEE is responsible for, directly or indirectly related to (1) the work, services, or materials provided under this Agreement; or (2) any failure to perform the GRANTEE's obligations under this Agreement; or (3) any improper or deficient performance of such contractual obligations.

If the GRANTEE is a Fiscal Sponsor under this Agreement, the GRANTEE shall also hold harmless, defend and indemnify the CITY and its officers, employees, and agents, individually and in their official capacities, from all claims of liability for damages directly or indirectly arising from or connected with its entering into a Fiscal Sponsorship Agreement with the Sponsored Organization, including but not limited to the loss of its tax-exempt status with the IRS and all adverse consequences resulting therefrom.

It is expressly agreed and understood that any approval by the CITY of the services and activities performed by the GRANTEE shall not operate to limit the indemnification obligations or any other obligations of the GRANTEE assumed

under this Agreement. The indemnification obligation is not limited by, but is in addition to, any insurance obligations contained in this Agreement.

B. If the GRANTEE uses or licenses any design, device, material, process, technology or any other intellectual property ("Intellectual Property") covered by patent, copyright, trademark or other intellectual property protection, the right for such use shall be procured by the GRANTEE from the appropriate owner. The GRANTEE shall hold harmless, defend, and indemnify the CITY and all its officers, agents, servants and employees against all claims arising from the use of any claims for infringement by reason of the use of any such Intellectual Property in connection with providing services under this Agreement.

C. This section shall survive the expiration or termination of this Agreement.

IX. INSURANCE REQUIREMENTS

At all times during the term of this Agreement, and any extensions thereto, the GRANTEE shall procure and maintain any and all insurance to cover GRANTEE's operations that may be required under any applicable federal, state or local law, statute or ordinance or regulation, including but not limited to applicable worker's compensation and automobile liability insurance. Insurance coverage(s) maintained as a result of the Grant Activity may be paid with Grant monies on a pro-rata basis.

In addition, the GRANTEE shall maintain Commercial General Liability (CGL) insurance in an amount not less than $1,000,000 each occurrence/$2,000,000 general aggregate and if deemed necessary by the CITY, commercial umbrella insurance with a limit of not less than $1,000,000 each occurrence/aggregate. If the Grant is used to perform professional services, GRANTEE shall maintain (or if applicable, cause the subcontractor(s) and/or consultant(s) performing such services to maintain) professional liability errors & omissions insurance in an amount not less than $1,000,000. The CITY shall be added as additional insured under the CGL, automobile and commercial umbrella insurance policies, if applicable. GRANTEE's obligation under this section shall apply to the full limits carried by the GRANTEE, even if greater than what is required herein. The CITY reserves the right to require additional kinds and amounts of insurance as it deems necessary based on GRANTEE's operations. GRANTEE shall waive on its behalf, and on behalf of any its insurers, any and all rights, including rights of subrogation, it may have against the City under any of GRANTEE's policies of insurance.

X. CONFLICT OF INTEREST

No officer, director, employee, consultant or elected or appointed official of the CITY or the GRANTEE who exercises any function or responsibilities in connection with the Grant or Grant Activity shall:

A. Participate in any decision relating to the Grant or Grant Activity that affects their personal interests or the interests of any corporation, partnership, or association in which they are directly or indirectly interested; or

B. Have any interest, direct or indirect, in this Agreement, subcontract, or any other agreement with respect to the Grant or Grant Activity, or the proceeds thereof.

C. Provided, however, no person or entity referenced herein shall be disqualified from participating in any decision affecting the Grant or Grant Activity, or from holding any interest as described herein, so long as:

1. The interest of said person or entity is fully disclosed to the GRANTEE's board of directors or other governing body;

2. Such interest is duly approved by a majority of the GRANTEE's board of directors or governing body not so interested or connected as being in the best interests of the organization; and

3. Payments or other value provided to the interested person or entity are reasonable and do not exceed fair market value.

XI. PROCUREMENT, SUBCONTRACTING AND FISCAL SPONSORSHIPS

Parceling, or dividing the purchase of same, like or related goods or services into purchases of smaller quantities, to evade the procurement requirements is not permitted.

A. Procedures for procuring services and subcontracts. If a GRANTEE desires to procure or subcontract any part of the services under this Agreement with costs exceeding the greater of $1,000.00 or ten percent (10%) of the Grant amount, the GRANTEE must follow the guidelines below:

1. First obtain the DCS Director's written consent;

2. Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative services or subcontracts;

3. Ensure the solicitation is based upon a clear and accurate description of the expected services;

4. Enter into contracts only with responsible contractors who possess the potential ability to successfully perform expected services. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources;

5. All proposed sole source contracts or where only one bid or proposal is received shall be subject to approval at the discretion of the DCS Director; and

6. Maintain records for the purchase that include the following:

a. Basis for contractor selection;

b. Justification for lack of competition when competitive bids or offers are not obtained; and

c. Basis for award cost or price.

B. Procedures for procuring Grant-funded capital assets. Before a GRANTEE purchases a Grant-funded capital asset, the GRANTEE must follow the guidelines below:

1. Provide records for the purchase that include the following:

   a. Basis for vendor selection;

   b. Justification for lack of competition when competitive bids or offers are not obtained; and

   c. Basis for award cost or price.

2. Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items; and

3. All proposed sole source contracts or where only one bid or proposal is received shall be subject to approval at the discretion of the DCS Director.

C. Contract Administration.

1. All procurement or subcontract agreements (each a “Subcontract”) entered into by the GRANTEE shall be in writing.

2. If GRANTEE subcontracts any scope of work of any of the Grant Activities, GRANTEE shall ensure that such subcontractor maintain the same levels of insurance limits and coverages as outlined above. The subcontractor’s insurance shall be in addition to, and not as a replacement of, the requirements set forth in section IX. INSURANCE REQUIREMENTS.

3. No cost incurred prior to the execution of a written Subcontract shall be eligible for payment with funds under this Agreement.

4. The GRANTEE shall maintain a system for contract administration to ensure that each contractor under the Subcontract (“Subcontractor”) conforms to the terms, conditions and specifications of its Subcontract, and to ensure adequate and timely follow-up of purchases.

5. The procurement or subcontracting shall not, under any circumstances, relieve the GRANTEE of the GRANTEE’s obligation and liability under this Agreement.

6. All persons engaged in performing the work covered by the Subcontract shall be considered agents of the GRANTEE, and shall be subject to the terms and conditions found herein.

7. Disputes between the GRANTEE and the GRANTEE’s Subcontractor(s) shall be the responsibility of the GRANTEE and not the responsibility of the CITY.

If the GRANTEE is a Fiscal Sponsor, the terms “subcontract,” “subcontracting,” and “subcontractor” herein shall be used, defined and enforced interchangeably with the terms “Fiscal Sponsorship Agreement,” “Fiscal Sponsorship,” and “Sponsored Organization,” respectively, as those terms are defined in the Request for Grant Proposal related to this Agreement.

XII. SEXUAL HARASSMENT POLICY

A. The GRANTEE must comply with Section 1-18.4, ROH (City Council Ordinance No. 93-84) on sexual harassment. The GRANTEE shall have and enforce a policy prohibiting sexual harassment. The GRANTEE's sexual harassment policy must set forth the same or greater protection than those contained or required by the ordinance. The ordinance is applicable to the employer's business and includes the following:

1. Prohibitions against an officer's or employee's sexual harassment of the following:

a. Another officer or employee of the employer;

b. An individual under consideration for employment with the employer; or

c. An individual doing business with the employer;

2. A provision prohibiting a management or supervisory officer or employee from knowingly permitting a subordinate officer or employee to engage in the sexual harassment prohibited under this sexual harassment policy;

3. A prohibition against retaliation towards an officer, employee, or individual who has complained of sexual harassment, conducted an investigation of a complaint, or acted as a witness during an investigation of a complaint;

4. A prohibition against a malicious false complaint of sexual harassment by an officer, employee, or individual;

5. Provisions allowing an officer, employee, or individual to make a sexual harassment complaint to an appropriate management, supervisory, or personnel officer or employee;

6. Procedures for investigating a sexual harassment complaint in an unbiased, fair, and discreet manner with appropriate safeguards to maintain confidentiality and protection from embarrassment;

7. A provision requiring the use of the “reasonable person of the same gender standard,” to determine if sexual harassment has occurred. Under the standard, sexual harassment shall be deemed to have occurred if the alleged offender's conduct would be considered sexual harassment from the perspective of a reasonable person of the same gender as the alleged victim. If the alleged victim is a woman, the “reasonable person of the

same gender standard" shall be equivalent to and may be called the "reasonable woman standard;"

8. Disciplinary actions which may be imposed on an officer or employee who committed a prohibited act; and

9. For an employer with at least five (5) employees, a provision requiring the annual viewing of a video on the sexual harassment policy by each management or supervisory officer or employee.

B. The policy required under this section shall be in effect for at least the duration of the GRANTEE's Grant with the CITY.

C. The action of the proposer in submitting its proposal or accepting the Grant or signing this Agreement shall constitute its pledge and acceptance of the provisions for the sexual harassment policy as required by Section 1-18.4, ROH.

D. Section 1-18.4, ROH is available for viewing at https://codelibrary.amlegal.com/codes/honolulu/latest/overview. The GRANTEE may also request to inspect a copy from the Office of the City Clerk, Room 203, City Hall, 530 South King Street, Honolulu, Hawaii 96813.

XIII. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Agreement, the GRANTEE agrees as follows:

A. The GRANTEE will not discriminate against any employee or prospective employee on the basis of race, color, religion, ancestry, national origin, disability or handicap, age, marital/familial status, or sex (including gender identity or expression, sexual orientation, or pregnancy), or any other applicable area protected by law, with regard to public assistance and access to programs or activities. The GRANTEE will comply with Federal and State non-discrimination mandates applicable to employment (including applicants and employees). The GRANTEE agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer of the CITY setting forth the provisions of this nondiscrimination clause.

B. The GRANTEE will, in all solicitations or advertisements for employees placed by or on behalf of the GRANTEE, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin, and without regard to any other basis prohibited by State law.

C. In the event the GRANTEE is found to be in noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be canceled, terminated or suspended in whole or in part and the GRANTEE may be declared ineligible for further government contracts, and such other sanctions may be imposed and remedies invoked as otherwise provided by county, state or federal law.

D. Record Retention. The GRANTEE shall retain all records pertinent to this Agreement for a period of three (3) years after the final payment has been paid.

Records for any displaced person, meaning any displaced individual, family, partnership, corporation, or association, must be kept for three (3) years after the displaced person has received final payment. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the applicable record retention period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the applicable retention period, whichever occurs later.

E. Client Data. The GRANTEE shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to: client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to CITY monitors or their designees for review upon request.

F. Disclosure. The GRANTEE understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the CITY's or the GRANTEE's responsibilities with respect to services provided under this Agreement, is prohibited unless written consent is obtained from such persons receiving service and, in the case of a minor, that of a responsible parent/guardian.

G. Property Records. The GRANTEE shall maintain real property inventory records which clearly identify properties purchased, improved or sold.

H. Close-Outs. The GRANTEE's obligation to the CITY shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, and determining the custodianship of records.

XIV. PERSONAL INFORMATION PROTECTION

A. Definition. The terms as used in this section have the following meaning: "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.

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

C. Confidentiality of Material.

1. All material given to or made available to the GRANTEE by the CITY by virtue of this Grant, which consists of personal information, shall be safeguarded by the GRANTEE and shall not be disclosed without the prior written approval of the CITY.

2. The GRANTEE agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Grant.

3. The GRANTEE agrees to implement appropriate technological safeguards that are acceptable to the CITY to reduce the risk of unauthorized access to the personal information.

4. The GRANTEE shall report to the CITY in a prompt and complete manner any security breaches involving personal information.

5. The GRANTEE agrees to mitigate, to the extent practicable, any harmful effect that is known to the GRANTEE because of a use or disclosure of personal information by the GRANTEE in violation of the requirements of this provision.

6. The GRANTEE shall complete and retain a log of all disclosures made of personal information received from the CITY, or personal information created or received by the GRANTEE on behalf of the CITY.

D. Security Awareness Training and Confidential Agreements.

1. The GRANTEE 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. The GRANTEE 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 GRANTEE will be treated as confidential;

b. Access to the personal information will be allowed only as necessary to perform the Grant; and

c. Use of the personal information will be restricted to uses consistent with the services to this Grant.

E. Termination for Cause. In addition to any other remedies provided for by this Grant, if the CITY learns of a material breach by the GRANTEE of this provision by the GRANTEE, the CITY may at its sole discretion:

1. Provide an opportunity for the GRANTEE to cure the breach or end the violation; or

2. Immediately terminate this Grant.

In either instance, the GRANTEE and the CITY shall follow Chapter 487N, HRS, with respect to notification of a security breach of personal information.

F. Records Retention.

1. Upon any termination of this Grant, the GRANTEE shall, pursuant to Chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the CITY.

2. The GRANTEE and all Subcontractors shall maintain the files, books, and records that relate to the Grant, including any personal information created or received by the GRANTEE on behalf of the CITY, and any cost or pricing data, for three (3) years after the date of final payment under the Grant. The personal information shall continue to be confidential and shall not be disclosed without the prior written approval of the CITY. After the three (3) year retention period has ended, the files, books, and records that contain personal information shall be destroyed pursuant to Chapter 487R, HRS.

XV. OWNERSHIP RIGHTS AND COPYRIGHT

The CITY reserves a paid-up, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for the CITY's purposes: i) the copyright in all products developed under this Grant; and ii) any rights of copyright to which the GRANTEE purchases ownership under an award (including but not limited to curricula, training models, technical assistance products, and any related materials). Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically or otherwise.

XVI. ADVERTISING AND PROMOTION

The CITY may review and approve all advertising content prior to media materials being published or released, including any acknowledgement that financial support for the event is provided in part by the CITY.

XVII. MISCELLANEOUS

A. Amendment. Except as herein otherwise expressly provided, this Agreement may be amended only by a written amendment executed by both parties.

B. The CITY's Right to Amend. Notwithstanding any provision herein to the contrary, during the term of this Agreement, the CITY reserves the right, at any time, to amend this Agreement in order to assure compliance with all City and County of Honolulu, State of Hawaii and federal statutes, ordinances, regulations and guidelines. All such amendments shall be within the general scope of this Agreement. The CITY shall provide all such amendments in writing to the GRANTEE. The GRANTEE agrees that it shall immediately take any and all reasonable steps to comply with such amendments and not to jeopardize the grant or loan as the case may be.

C. Applicable Law. The provisions of this Agreement shall be interpreted in accordance with the law of the State of Hawaii as that law is construed and amended from time to time.

D. Assignment. Neither the entire agreement which is stated in this Agreement nor any interest in it may be assigned by any party for any purpose without the prior written consent of each other party.

E. Authorization. Each party warrants to each other party that the individuals executing this Agreement on behalf of the respective parties are authorized to do so. The GRANTEE and the person signing for the GRANTEE below represent and warrant that there are no restrictions, agreement, limitations on the GRANTEE's right or ability to enter into and perform the terms of this Agreement.

F. Binding Effect. Upon its execution by each party, this Agreement shall become binding and enforceable according to its provisions. If more than one party is obligated by any provisions stated in this Agreement, those parties shall be jointly and severally liable for the performance of those obligations. The rights and obligations of each party named in this Agreement shall bind and inure to the benefit of that party, the respective heirs, personal representatives, successors, and assigns of that party.

G. Consent; Subsequent Agreement. If a subsequent consent or agreement required of any party by the provisions of this Agreement is requested by a party, it shall not be unreasonably withheld by the party to whom the request is made.

H. Construction. Each party named in this Agreement acknowledges and agrees that:

1. Each party is of equal bargaining strength;

2. Each party has actively participated in the negotiation and preparation of this instrument;

3. Each party has consulted with their respective legal counsel and other professional advisors as each party has deemed appropriate;

4. Each party and the party's legal counsel and advisors have reviewed this instrument; and

5. Each party has agreed to be bound by the terms stated in this instrument following its review and obtaining advice.

I. Counterparts. This Agreement may be executed by the parties in counterparts. The counterparts executed by the parties named in this Agreement and, properly acknowledged, if necessary, taken together, shall constitute a single Agreement.

J. Dates. If any date stated in this instrument falls on a Saturday, Sunday, or legal holiday, such date shall be the next following business day.

K. Defined Terms. Certain terms where they initially are used in this Agreement are set off by quotation marks inside parentheses and subsequently are capitalized. Those designated terms shall have the same meaning throughout this Agreement, unless clearly inappropriate in context.

L. Discrimination Prohibited. The GRANTEE will not discriminate against any program beneficiary or prospective program beneficiary on the basis of race, color, religion, ancestry, national origin, disability or handicap, age, marital/familial status, or sex (including gender identity or expression, sexual orientation, or pregnancy), or any other applicable area protected by law with regard to public assistance and access to programs or activities. The GRANTEE will comply with Federal and State non-discrimination mandates applicable to employment (including applicants and employees).

M. Execution of Agreement. This Agreement shall not be considered binding upon the CITY until an Agreement, in form and substance satisfactory to the CITY has been fully and properly executed by the CITY and the GRANTEE.

N. Force Majeure. If any party is prevented from performing its obligations stated in this Agreement by any cause not within the reasonable control of that party, including, but not limited to, fire, an act of God, public enemy, or war, an act or failure to act of a government entity (except on the part of the CITY), unavailability of materials, or actions by or against labor unions, it shall not be in default of its obligations stated in this Agreement; provided, however, any party delayed by such an event shall request an extension of time to perform its obligations stated in this Agreement by notifying the party to which it is obligated within ten (10) calendar days following the event. If the notified party agrees that the event was the cause of the delay, the time to perform the obligations stated in this Agreement shall be extended by the number of calendar days of delay caused by the event. If no notice is given by the delayed party, no time extension shall be granted.

O. Gender; Number. In this Agreement, the use of any gender shall include all genders and the use of any number in reference to nouns and pronouns shall include the singular or plural, as context dictates.

P. Governing Law and Venue. The provisions of the Grant shall be interpreted in accordance with the laws of the State of Hawai'i as those laws are construed and amended from time to time. All disputes arising out of or relating to this Grant shall be subject to the jurisdiction and venue of the state and federal courts in Honolulu, Hawai'i.

Q. Independent Contractor/Non-Agency. The parties acknowledge that the GRANTEE is an independent contractor, and neither party hereto is a partner, agent and/or employee of the other.

R. Integration. This Agreement contains all of the agreements of the parties pertaining to its subject matter. Each party acknowledges that no person or entity has made any oral or written representation on which it has relied in entering into this Agreement which set forth herein.

S. Legal Action and Fees. In the event of any controversy, claim or dispute between the parties hereto arising out of or relating to this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable expenses, including attorneys' fees and costs.

T. Licenses. The GRANTEE shall comply with all applicable licensing requirements of the county, state, and federal governments and with all applicable accreditation and other standards of quality generally accepted in the field of the GRANTEE's activities.

U. No Drafter. No party shall be deemed to have drafted this Agreement. No provision stated in this Agreement shall be construed against any party as its drafter.

V. No Obligations to Third Parties. Unless there is a provision stated in this Agreement to the contrary, the execution and delivery of this Agreement shall not confer rights on any person or entity except the parties herein or obligate either party herein to any person or entity except another party herein.

W. No Offer. The provisions stated in this Agreement shall not bind any party until each party has executed it. The mere delivery of this Agreement is not an offer.

X. No Waiver. No consent or waiver, expressed or implied, by either party to or of any breach or default by the other party in the performance of its obligations hereunder, shall be valid unless in writing. No such consent or waiver shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of any other obligations of such party hereunder. The failure of any party to declare the other party in default shall not constitute a waiver by such party of its rights hereunder, irrespective of how long such failure continues.

Y. Paragraph Titles. The titles of each provision stated in this Agreement are included only for the convenience of the parties. They shall not be considered in the construction and interpretation of the provisions stated in this Agreement.

Z. Professional Qualifications. The GRANTEE shall have in its employ such persons as are professionally qualified to engage in the Grant Activity.

AA. Required Actions by the Parties. Each party named in this Agreement agrees to execute the instruments and to diligently undertake the acts necessary to consummate the transaction contemplated by this Agreement. Each party shall use its best efforts to consummate the transaction contemplated by this Agreement.

BB. Severability. If any provision stated in this Agreement subsequently is determined to be invalid, illegal, or unenforceable, that determination shall not affect the validity, legality, or enforceability of the remaining provisions stated in this Agreement unless that is made impossible by the absence of the omitted provision.

CC. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto (as permitted pursuant to the provisions of this Agreement).