

AGREEMENT
Between

and
The University of Hawaii, for the benefit of

This AGREEMENT, effective the ____ day of _____, 20__, is entered into between _____ (hereinafter referred to as the "Purchaser"), whose address is _____, and the University of Hawaii ("UH"), the state university and a body corporate of the State of Hawaii, for the benefit of _____, whose address is _____.

The Purchaser and UH agree as follows:

1. **Scope of Work.** UH shall provide the goods and services set forth in Attachment 1, which is hereby made a part of the Agreement.
2. **Time of Performance.** The goods will be delivered and the services shall be performed in accordance with the "Time Schedule" set forth in Attachment 2, which is hereby made a part of the Agreement.
3. **Compensation.** The goods and services shall be compensated for in accordance with the "Compensation and Payment Schedule" set forth in Attachment 3 which is hereby made a part of the Agreement.
4. **Notice.** Any notice to be given hereunder by either party to the other, shall be in writing and shall be sent to

Notices to the UH shall be addressed to:

University of Hawaii

With a copy to:

Notices to Purchaser shall be addressed to:
Name, Title
Address
Email

5. **Other Terms and Conditions.** The General Conditions and Special Conditions, if any, set forth in Attachments 4 and 5 respectively, are hereby made a part of the Agreement. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

IN WITNESS WHEREOF, the parties have executed the Agreement, effective as of the date first above written.

PURCHASER

By: _____
Name: _____
Title: _____

UNIVERSITY OF HAWAII

By: _____
Name: _____
Title: _____

By: _____
Name: Vassilis L. Syrmos
Title: Vice President for Research and Innovation

SCOPE OF WORK
Attachment 1

UH shall perform the following work under this Agreement:

Scope of Services:

[Describe in detail the services to be performed and the final deliverable. If none, put N/A]

TIME SCHEDULE
Attachment 2

Period of performance: _____ to _____.

COMPENSATION AND PAYMENT SCHEDULE
Attachment 3

GENERAL CONDITIONS

Attachment 4

1. **Governing Law.** The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to the Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
2. **Limitation of Liability.** UH shall not be held liable for any special, indirect, incidental, consequential or punitive damages, even if UH is advised in advance of the possibility of such damages. Without limiting the foregoing, the liability of UH shall not exceed, and the Purchaser's exclusive remedy shall be limited to, the compensation paid by the Purchaser under this Agreement.
3. **No Warranties.** Purchaser understands that data, research results, deliverables, reports, analyses, and all other output gathered by UH or by Purchaser under this Agreement are provided strictly "As-Is" without any other warranty or guaranty of any kind. All other warranties, express and implied, are hereby expressly disclaimed including warranties of merchantability and fitness for a particular purpose. UH shall not be liable for any indirect, special, incidental, consequential or punitive losses or damages of any kind, including, without limitation, lost profits (regardless of whether or not UH knows or should know of the possibility of such losses or damages). This provision shall survive the expiration and/or termination of this agreement.
4. **Modifications to Agreement.** Any extensions, changes or alterations to the Agreement shall be agreed to by both parties in writing before being undertaken, and the same shall be evidenced by written amendment to the Agreement.
5. **Disputes.** No dispute arising under the Agreement may be sued upon by either party until after the other party's written request to informally resolve the dispute is rejected, or until ninety (90) days after receipt of the written request, whichever comes first.
6. **Termination.** Either party to the Agreement shall have the privilege, with or without cause, to cancel or annul the Agreement at any time upon written notice given thirty (30) days in advance of such termination. Upon termination, the total amount to be paid to UH shall be based on the percentage of the total work completed up to the time of such termination.
7. **Force Majeure.** If a Force Majeure Event (as defined herein) prevents, interferes, or restricts the performance of this agreement, the affected party shall use reasonable efforts to promptly notify the other party in writing (i) that it is unable to perform, and (ii) the expected duration of such inability.

During the duration of a Force Majeure Event, neither party shall be liable for any failure, delay, or interruption in performing its obligations hereunder due to causes or conditions beyond its reasonable control, and not due to any fault or negligence of the party affected. The affected party shall use its reasonable efforts to resume performance as soon as possible.

A Force Majeure Event includes, but is not limited to, strikes, boycotts, picketing, slow-downs, work stoppages, or labor disputes; restrictions or requirements imposed by any laws or government actions with the force and effect of law; priorities, rationing, curtailment, or shortage of labor or materials; war, revolution, acts of terrorism, or any matter or thing resulting therefrom; embargoes, acts of God, or severe weather or climatic conditions (such as storms, hurricanes, typhoons, earthquakes, tornadoes, volcanic eruptions, earth movements, tsunamis, and floods); acts of the public enemy, acts of superior governmental authority, riots, rebellion, sabotage, fire, or accidents; epidemics, pandemics, quarantines, or regional, national, or international public health emergencies; or any other cause or causes beyond the reasonable control of the affected party or parties.

8. **Confidentiality of Materials.** UH, as agency of the State of Hawaii, is subject to and must comply with all applicable public disclosure and open governmental records laws, including, without limitation Chapter 92F, Hawaii Revised Statutes. Under such laws, there is a presumption that all government records are subject to disclosure, unless and to the extent that one of the statutory disclosure exemptions are deemed to apply. UH agrees not to use or share the information received under this Agreement, except as necessary to perform the Scope of Work described in Attachment 1 or as may be required by law.
9. **Export Controls.** The Parties acknowledge that activities covered by this Agreement may be subject to export control laws that prohibit or restrict: (i) transactions with certain persons; and/or (ii) the type and level of items that may be exported, reexported or deemed exported. Each party agrees to comply with all applicable export control laws and regulations, including but not limited to those of the United States (such as the Export Administration Regulations (EAR), International Traffic in Arms Regulations (ITAR), Office of Foreign Assets Control (OFAC), Nuclear Regulatory Commission (NRC), Department of Energy (DOE)), as well as the export control laws and regulations of other relevant jurisdictions. Neither party shall export, re-export, transfer, or otherwise distribute any items, software, or technology provided under this agreement in violation of such laws and regulations. Each party agrees to obtain any necessary export licenses or authorizations and to provide the other party with any documentation or information reasonably requested to facilitate compliance with export control laws and regulations.

10. **Independent Entities.** The Parties agree that nothing contained in this Agreement shall, create any relationship between UH and Purchaser, other than that of independent entities contracting with each other solely for the purpose of performing the Scope of Work described in Attachment 1. Nothing contained in this agreement should be construed to create a partnership, joint venture, or other similar relationship between UH and Purchaser.
11. **Publicity.** Purchaser shall not identify UH in any products, publicity, promotion, promotional advertising, or other promotional materials to be disseminated to the public, or use any trademark, service mark, trade name, logo, or symbol that is representative of UH or its entities, whether registered or not, or use the name, title, likeness, or statement of any UH faculty member, employee, or student, without UH's prior written consent.
13. **Severability.** In the event that any provision of the Agreement is declared invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of the Agreement, provided that the fundamental terms and conditions of the Agreement remain legal and enforceable.
14. **Counterparts.** The Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement.

SPECIAL CONDITIONS

Attachment 5