

**REQUEST FOR PROPOSALS**

**The Research Corporation of the University of Hawaii  
requests proposals for the**

**RESEARCH INCENTIVE GIFT CARD SERVICES**

**for the**

**Office of the Vice President for Research and Innovation  
University of Hawaii  
Honolulu, HI**

**July 1, 2020**

## NOTICE TO OFFERORS

### RFP Availability

A copy of the Request for Proposal (RFP) OVPRI-RFP-20200601 Research Incentive Gift Card Services is available on the website: <https://www.hawaii.edu/research>.

### Questions About the RFP

All questions about the RFP must be directed to Kevin Hanaoka at [ovprifa@hawaii.edu](mailto:ovprifa@hawaii.edu). Closing Date for Receipt of Offeror Questions is 4:30 PM (Hawaii Standard Time), July 20, 2020.

### Closing Date for Receipt of Proposals

Completed proposals must be received no later than 4:30 PM (Hawaii Standard Time), August 6, 2020, at the address listed in Section 1.10 of this RFP. Email or mailed submissions will be accepted (email submittals are strongly preferred), but regardless of the submittal method, it is the Offeror's responsibility to ensure confirmation of proposal receipt prior to the Closing Date for Receipt of Proposals. Proposals received after the time and date fixed for submittal will not be considered.

This RFP is issued by The Research Corporation of the University of Hawaii (RCUH).

Research Corporation of the University of Hawaii  
2800 Woodlawn Drive, Suite 200  
Honolulu, HI 96822

## **TABLE OF CONTENTS**

### NOTICE TO OFFERORS

SECTION 1 -- ADMINISTRATIVE OVERVIEW.....	4
SECTION 2 – STATEMENT OF WORK.....	9
SECTION 3 – PROPOSAL REQUIREMENTS.....	11
SECTION 4 – EVALUATION OF PROPOSALS AND BASIS FOR AWARD .....	16
Attachment A. Notice of Intent to Submit a Proposal.....	19
Attachment B. General Conditions for Services Agreements.....	20
Attachment C. Special Conditions for Services Agreements.....	27
Attachment D. Standards of Conduct Declaration.....	28

IT IS THE RESPONSIBILITY OF ALL OFFERORS TO CHECK THE TABLE OF CONTENTS TO CONFIRM THAT ALL PAGES LISTED THEREIN ARE CONTAINED IN THEIR RFP PACKAGE.

This RFP contains 29 pages.  
Attachment E is 5 pages and is located after page 29 of the RFP.

## SECTION 1 -- ADMINISTRATIVE OVERVIEW

### 1.1 INTRODUCTION

This is a Request for Proposals (RFP) issued by the Research Corporation of the University of Hawaii (RCUH), on behalf of the Office of the Vice President for Research and Innovation (OVPRI), University of Hawaii (UH) to solicit proposals from Offerors who wish to be considered. The contract will be issued and administered as an Agreement for Services with the RCUH.

### 1.2 SCHEDULE OF KEY DATES

The schedule of key dates set forth herein represents the RCUH's best estimate of the schedule that will be followed. Any of the dates listed below may be changed at any time at the sole discretion of the RCUH Procurement Officer or Delegated Procurement Officer.

Date of Notice (RFP Issued): ..... 7/1/2020  
Closing Date for Receipt of Offeror's Attachment A  
(Notice of Intent to Submit a Proposal): ..... 7/13/2020; 4:30 PM HST  
Closing Date for Receipt of Offeror Questions:..... 7/20/2020; 4:30 PM HST  
Closing Date for Posting Responses to Questions: ..... 7/23/2020; 4:30 PM HST  
Closing Date for Receipt of Proposals: ..... 8/06/2020; 4:30 PM HST  
Proposal Review Period: ..... 8/7/2020 – 8/14/2020  
Date of Contractor Selection and Award: ..... 8/17/2020  
Services Start Date (Tentative): ..... 9/1/2020

### 1.3 RFP AMENDMENTS

The RCUH reserves the right to amend the RFP at any time prior to the Closing Date for Receipt of Proposals. All RFP amendments will be posted on the following website, <https://www.hawaii.edu/research/>. **Offerors are solely responsible to check this website for any modifications to the RFP. The RCUH reserves the right to cancel this RFP at any time for any reason at no cost to the RCUH.**

### 1.4 QUESTIONS BY OFFERORS AND POTENTIAL OFFERORS TO RCUH

All questions by Offerors or potential Offerors should be submitted in writing via email to Kevin Hanaoka at [ovprifa@hawaii.edu](mailto:ovprifa@hawaii.edu). Questions regarding proposal requirements, contents, and details will receive a response only for those questions received by 4:30 PM, HST July 20, 2020. All received questions and responses will be posted by July 23, 2020 on the website, <https://www.hawaii.edu/research/>.

The website referred to in the preceding paragraph will be non-secured (open and accessible to anyone to view). Since all questions and responses will be posted and accessible to the public, no proprietary information or questions regarding proprietary information or material should be communicated by an Offeror to the website identified above.

## **1.5 QUESTIONS BY RCUH TO OFFERORS**

The Offeror is responsible for ensuring the correctness and readability of its proposal. However, the RCUH reserves the right to seek clarifications during the Proposal Review Period. Content for which a clarification may be requested includes obvious mislabeling of figures or tables, illegible text (such as may occur in a figure label being reduced to too small a font size), or an obvious clerical mistake (e.g., a misplaced decimal point or obvious mistake in designation of a unit such as feet instead of meters). The authority to permit correction of proposals is limited to proposals that, as submitted, are responsive to the RFP and may not be used to permit correction of proposals to make them responsive.

## **1.6 CLARIFICATION OF THE RFP**

An Offeror shall carefully review this RFP for defects and questionable or objectionable matter. Comments concerning defects and questionable or objectionable matter shall be promptly submitted to the RCUH prior to the Closing Date for Receipt of Offeror Questions. This shall allow issuance of any necessary amendments to the RFP. The Offeror hereby acknowledges, agrees, and waives any claim arising from any knowledge of any defect in this RFP acquired prior to the Closing Date for Receipt of Offeror Questions and failing to inform the RCUH prior to said deadline. The Offeror further acknowledges and agrees that: (1) the RCUH reserves the right to waive any technical irregularity not affecting an unbiased and objective evaluation of all proposals; (2) such waiver will be in the best interest of the RCUH; and (3) the Offeror hereby waives any claim against the RCUH arising from such technical irregularity.

## **1.7 TAX CLEARANCE FOR PROPOSALS**

A tax clearance from the Hawaii Department of Taxation and the U.S. Internal Revenue Service is not required for submission of a proposal. However, in accordance with Section 103-53 of the Hawaii Revised Statutes, the selected contractor shall submit a valid tax clearance from the Hawaii Department of Taxation and the U.S. Internal Revenue Service prior to execution of the Agreement for Services. A Certificate of Vendor Compliance that reflects a “Compliant” status from Hawaii Compliance Express (HCE), <https://vendors.ehawaii.gov/hce/splash/welcome.html> is acceptable in satisfying the tax clearance requirement. Governmental agencies in the U.S. (i.e., city, county, state, federal) and any foreign governmental agencies are excepted from the tax clearance requirement.

Due to the fact that the proposal review and contract award period may be tightly scheduled, it is highly recommended that Contractors submitting proposals apply for tax clearance upon submission of the proposal in order to meet key dates.

## **1.8 PREPARATION COSTS**

Any costs incurred by Offerors in preparing or submitting a proposal shall be the sole responsibility of the Offeror.

## **1.9 PROPRIETARY INFORMATION**

The Offeror should clearly identify any proprietary information in the Offeror's submitted proposal. Upon final execution of an Agreement for Services, all non-proprietary information in an Offeror's proposal may be made available by the RCUH for public inspection upon request. Accordingly, material designated as confidential should be readily separable from the proposal in order to facilitate inspection of the nonconfidential portion of the proposal.

## **1.10 SUBMISSION OF PROPOSALS**

Offerors may submit proposals by mail or email. Email submittals are strongly preferred. Note that the maximum allowable file size for email attachments is 10 MB, so an Offeror may need to send its complete proposal in multiple parts. If submitting by mail, please include the original and one copy. It is the responsibility of the Offeror to confirm that the RCUH has received its proposal prior to the Closing Date for Receipt of Proposals. Proposals may be modified by an Offeror prior to the Closing Date for Receipt of Proposals.

Address, if submitting by mail:

Office of the Vice President for Research and Innovation  
University of Hawaii  
2425 Campus Road, SL10  
Honolulu, HI 96822  
Attn: Fiscal

Address, if submitting by email:

[ovprifa@hawaii.edu](mailto:ovprifa@hawaii.edu)

## **1.11 CERTIFICATION OF PROPOSAL**

By submitting a proposal, the Offeror certifies that the proposal submitted to the RCUH is in accordance with any required authorization by the governing body of the Offeror's organization. The Offeror further certifies that the information and responses contained in the proposal are true, accurate, and complete, and that the RCUH may justifiably rely upon said information for purposes of evaluation and contracting with the Offeror. If it is later discovered that any information provided in the Offeror's proposal is false, it will result in the Offeror's elimination from consideration.

## **1.12 PROPOSAL WITHDRAWAL**

An Offeror may withdraw its proposal by submitting a written request to the RCUH any time prior to the Closing Date for Receipt of Proposals.

## **1.13 RFP SUBMITTALS BECOME THE PROPERTY OF RCUH**

All proposals and other material submitted shall become the property of the RCUH, and may

be returned at the sole discretion of the RCUH.

#### **1.14 OPENING OF PROPOSALS**

Proposals will be opened after 4:30 P.M. Hawaii Standard Time, on August 7, 2020, or as amended at the office to which the proposals are submitted. The proposal opening will not be open to the public. Proposals will not be subject to public inspection until after an Agreement for Services is signed by all parties, but in no case will proprietary information or proprietary material designated as such and submitted by an Offeror as part of an Offeror's proposal, be available for public inspection.

#### **1.15 DISQUALIFICATION OF PROPOSALS**

The RCUH reserves the right to consider as acceptable only those proposals submitted in accordance with all the requirements set forth in this RFP, and which demonstrate an understanding of the scope of work. Any proposal offering any other set of terms and conditions contradictory to those included in this RFP, or that reserves the right to accept or reject award or the right to enter into a contract pursuant to an award, may be disqualified without further notice, at the discretion of the RCUH.

An Offeror shall be disqualified and its proposal automatically rejected for any one or more of the following reasons:

- The proposal shows any noncompliance with applicable law.
- The proposal is incomplete or irregular in such a way as to make the proposal indefinite or ambiguous as to its meaning.
- The Offeror is debarred or suspended. Entities that are currently debarred or suspended from federal procurement transactions are listed in the Excluded Parties Listing System. A search can be performed at [www.sam.gov](http://www.sam.gov) to determine whether an entity has an active exclusion.

#### **1.16 REFERENCES**

The Offeror must disclose all contracts for similar services for the last five years, and these will serve as potential references to be contacted by the RCUH as part of the evaluation of the Offeror's proposal. Points of contact and contact information should be indicated for each contract listed.

The RCUH reserves the right to contact the references named in the Offeror's proposal and any other references provided by the Offeror during the past five years. The results of discussions with the references will be used to score the proposal, as described in Section 4 of this RFP.

#### **1.17 SELECTION ON INITIAL PROPOSALS**

The RCUH may select a Contractor on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the Offeror's best terms. RCUH may elect to require oral presentations following the submission of proposals, if requirements for

the oral presentation process is included in Section 4.5.

### **1.18 BASIS FOR SELECTION**

Based on the evaluation process discussed in Section 4 of this RFP, the highest ranked responsible and responsive Offeror will be selected.

### **1.19 PROCESS FOR NEGOTIATIONS**

The RCUH will attempt to negotiate with the selected Offeror a mutually acceptable Agreement for Services. If this cannot be accomplished within 21 calendar days after initial Selection, the RCUH reserves the right to terminate contract negotiations with the first-ranked Offeror, and may select the second-ranked Offeror for negotiation of a potential award. This process may continue in order of Offeror ranking until a mutually acceptable Agreement for Services is achieved with the RCUH and an award is made to a selected Offeror.

### **1.20 AVAILABILITY OF FUNDS**

Offerors are advised that entering into an Agreement for Services is contingent upon availability of funds. If funds are not available, the RCUH reserves the right not to enter into an agreement.

### **1.21 NOTICE TO PROCEED**

The RCUH shall not be responsible for work done, even in good faith, prior to the RCUH's execution of an Agreement for Services unless specific provisions are made in the Agreement for Services.

### **1.22 CHANGES TO CONTRACTOR'S FEE**

It is recognized that financial audit disallowances and other changes may require adjustments in the compensation due to the Contractor. In the event that future actions would either disallow or minimize the payments already made to the Contractor, the Contractor shall assist the RCUH in defending the correctness of the claim for reimbursement. If the disallowance or adjustment is upheld, then the Contractor will repay RCUH to the extent the amount of the disallowance or adjustment was included in the total fee received by the Contractor. Payment to the RCUH shall be made within THIRTY (30) calendar days from which official notice is received by the Contractor from the RCUH.

### **1.23 PROCUREMENT OFFICER**

This RFP is issued by the Research Corporation of the University of Hawaii, on behalf of the UH Office of the Vice President for Research and Innovation. The Delegated Procurement Officer responsible for overseeing the RFP process and Agreement for Services is Kevin Hanaoka.

## SECTION 2 – STATEMENT OF WORK

### Background

The University of Hawaii (UH) is a public university founded in 1907. Its flagship research campus, University of Hawaii at Manoa, is classified as a Carnegie R1 institute of higher education. As a productive research university, faculty, staff and students use a variety of tools to solve today's problems and to answer complex questions. There has been a growing interest in conducting research with diverse populations through online mechanisms. As such, the UH is in need of a reliable, efficient, trackable and centralized system to provide research incentives, such as e-gift cards, to human subjects for researchers on all its campuses. The campuses are as follows:

- UH Manoa
- UH Hilo
- UH West Oahu
- Hawaii Community College
- Honolulu Community College
- Kapiolani Community College
- Kauai Community College
- Leeward Community College
- Maui College
- Windward Community College
- UH System Offices

### Statement of Work

The UH Office of the Vice President for Research and Innovation intends to issue a year-to-year contract, with an initial maximum contract term of three years.

The awarded supplier will provide a payment card program that includes gift cards that can be used at specific retail stores and/or a pre-loaded VISA/MasterCard that can be used anywhere credit cards are accepted. The gift cards will allow a means of compensating research subjects (without a penalty or activation charge). Cards paid out are considered compensation to the research subjects and are reportable to the IRS.

The awarded supplier should have experience in providing gift card services to colleges and universities, preferably Carnegie R1 institutions, for the purpose of paying research incentives.

Priorities for the card program are:

- A comprehensive stored valued payment card program that is simple and easy to administer;
- Secure handling of sensitive research information and the capability of the program to maintain the confidentiality of research subjects;

- Offer plastic gift cards inclusive of mailing services and e-gift cards
- Offer the ability for the card redeemer to choose to donate to a non-profit
- Cards that can be used at specific stores
- Cards that can be used like VISA/MasterCard at any location that accepts credit cards without a penalty, activation charge
- Cards that can be redeemed internationally
- No card fees
- The ability to withdraw funds from remaining cards that have been purchased, but never issued to any participants (“unused cards”)
- Allow UH to order cards with different denominations (e.g., \$5 USD, \$25 USD, etc.)
- Cards without expiration dates
- An online catalog that would allow campus departments to order cards directly

Selected Supplier will be expected to provide excellent service, creativity, and flexibility to the University. The Supplier must identify an individual to serve as the University’s primary contact for the duration of the contract. In addition, in case there is a change in staff, the Supplier will provide the name and contact information of a supervisor responsible for all aspects of the University’s contract.

If the primary Supplier contact cannot address billing issues, the Supplier will provide the name and contact information of the individual responsible for billing and accounting.

#### Reporting Requirements

Ability to provide comprehensive reports, including amounts utilized by the researcher, research project, departments, etc. with the capability to query data. These reports can be provided on request by the Supplier or through an online transactional based tracking-system that is accessible to researchers and administrators at UH.

- A. Reports will distinguish between taxable and non-taxable income for 1099 reporting.
- B. Where applicable, blinded reporting must be used to protect Personal Identifiable Information.
- C. The awarded supplier will prepare and issue 1099 reports to study participants.

Please note that because secure handling of research information and maintaining confidentiality of research subjects are important, prospective suppliers should ensure that they read the Attachment E. Other Special Conditions section of the draft contract attached to this RFP. The Special Conditions section contains the terms and conditions that UH expects the prospective supplier to adhere to in protecting and safeguarding sensitive information.

## **SECTION 3 – PROPOSAL REQUIREMENTS**

### **3.1 REQUIRED FORMAT**

The proposal shall be organized in sections in the following order:

1. Executive Summary
2. Technical Proposal
3. Qualifications and Expertise
4. Price Proposal
5. Appendices

#### **3.1.1 EXECUTIVE SUMMARY**

Offeror shall submit an Executive Summary outlining the key elements of the proposal.

#### **3.1.2 TECHNICAL PROPOSAL**

- 1) Please describe your company's card capabilities including:
  - a. How and where the cards can be used.
  - b. Whether the cards can be used as a standard Visa/MasterCard/American Express/Discover card.
  - c. Whether the cards are reloadable or one-time only type cards.
  - d. Whether cards are assigned to one specific individual or whether there is the option to not assign cards to a specific person.
  - e. Whether the University will have the ability to retract funds from cards that have been purchased, but never issued to any study participants. Briefly describe the process.
- 2) Describe the online system features you offer. Please provide details about your online tool capabilities.
- 3) Describe the invoicing options you offer, including how will funds be transferred and the invoice documentation that you can provide.
- 4) Please provide details around your training options. Describe the types of training you can provide and what it typically includes.

#### **3.1.4 QUALIFICATIONS AND EXPERTISE**

Offeror shall describe the firm's qualifications, experience and size. In addition, the Offeror shall identify the team it will use to provide the goods/services. Biographical summaries of the key team members shall be included in the proposal (to be included with Appendix B, described

below).

### **3.1.5 PRICE PROPOSAL**

Proposals submitted shall include a detailed listing of all potential fees associated with the card program. This includes, but is not limited to, pricing for:

- Digital cards, including electronic distribution fees
- Physicals cards, including postage
- Setup costs at both the institutional level and, if applicable, per project
- Fees to withdraw/transfer funds per card
- Costs of replacement cards and distribution thereof

Any proposed changes in pricing during the term of the contract must be submitted to the University no less than sixty (60) days prior to the end of each individual contract period. Any changes in pricing will be based on mutual agreement. The University may use a price index such as the CPI or PPI to validate the reasonableness of any requested price increases.

The University is looking for creative pricing options to allow the University to obtain cards at the lowest per unit cost.

### **3.1.6 APPENDICES**

Appendix A – Proposal Letter. The Proposal Letter shown in Appendix A shall be signed and dated by an individual authorized to legally bind the Offeror. Evidence shall be submitted showing the individual's authority to bind the Offeror.

Appendix B -- Offeror's Profile. The Offeror's Profile form shown in Appendix B shall be completed in its entirety.

Appendix C – References. Using the form shown in Appendix C, the Offeror must disclose all contracts for similar services performed during the last five years. Points of contact and contact information should be indicated for each contract listed. These will serve as potential references to be contacted by the RCUH as part of the evaluation of the Offeror's proposal.

**Appendix A**

**PROPOSAL LETTER TO THE RESEARCH CORPORATION OF THE UNIVERSITY OF HAWAII**

We propose to provide services for the Research Corporation of the University of Hawaii, for the benefit of \_\_\_\_\_ of the University of Hawaii.

It is understood that this proposal constitutes an offer.

It is understood and agreed that we have read the Research Corporation of the University of Hawaii's specifications described in the RFP and this proposal is made in accordance with the provisions of such specifications. By signing this proposal, we guarantee and certify all items included in this proposal meet or exceed any and all such specifications, and agree to the terms and conditions in all of the documents described in Section 4.6 of the RFP, including Attachments.

If selected, we agree to deliver goods and services which meet or exceed the specifications.

Respectfully submitted,

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
If contract is awarded, the purchase order/payment should be made to

\_\_\_\_\_  
Federal EIN

\_\_\_\_\_  
Remittance Address

\_\_\_\_\_  
City, State, Zip Code

\*Attach to this page: Evidence of authority of the above officer to submit an offer on behalf of the company, giving also, the names and addresses of the other officers of the company.

**Appendix B**

**OFFEROR PROFILE**

*(All items must be provided to be considered)*

**Company Name** \_\_\_\_\_ **Type of Company** \_\_\_\_\_

**Address** \_\_\_\_\_ **Total # Full Time Employees** \_\_\_\_\_

\_\_\_\_\_ **Phone Number** \_\_\_\_\_

**Email** \_\_\_\_\_ **Federal ID #** \_\_\_\_\_

**Company Start Date** \_\_\_\_\_ **State ID #** \_\_\_\_\_

**Project Manager / Principal Contact (Attach Bio)** \_\_\_\_\_

**Assigned Employees (Attach Bios)** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**(Attach Additional Listings)**

\_\_\_\_\_

**Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

**Position/Title** \_\_\_\_\_

**\*Attach to this page: Resumes for all project team members.**

**Appendix C**

**REFERENCES**

Name of Firm \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Contact Name \_\_\_\_\_ Position \_\_\_\_\_

Telephone Number \_\_\_\_\_ Email Address \_\_\_\_\_

Dates of Services \_\_\_\_\_

Description of Services Provided:

## SECTION 4 – EVALUATION OF PROPOSALS AND BASIS FOR AWARD

### 4.1 EVALUATION OF OFFEROR PROPOSALS

All responsive proposals received by the Closing Date for Receipt of Proposals of 4:30 PM Hawaii Standard Time, August 6, 2020, will be evaluated and scored.

### 4.2 EVALUATION COMMITTEE

A committee, comprised of at least three (3) representatives, will evaluate and score each proposal submitted after review of all proposals and completion of oral presentations, if required. The committee will submit its evaluations to the Delegated Procurement Officer, who may also be a representative on the committee. The Delegated Procurement Officer will review the RFP and the evaluations before the selection of a Contractor. The firm with the highest score according to the criteria shown in this section shall be awarded the contract.

### 4.3 CRITERIA FOR PROPOSAL EVALUATION AND SCORING METHOD

The scoring and subsequent ranking of each proposal will be based on a scoring method using weighted formulas for technical merit (ability to meet scope of work/schedule), qualifications and expertise, references, and price. The total score for each proposal will be on a scale of 0 to 100 points. Four general categories will be used to evaluate the proposals:

<u>Category</u>	<u>Maximum Number of Points per Category</u>
Technical merit	40
Qualifications and expertise	25
References	10
Price	25
Total	100

#### 4.3.1 DETAILED EVALUATION FORMULA FOR PROPOSED TECHNICAL APPROACH

Within the above general categories, points will be further divided as follows:

<b>Technical Merit</b>	<b>Maximum Number of Points</b>
Breadth of card options	10
Ease and security of online tool – especially handling sensitive research information and protecting identity of research subjects	20
Demonstrated quality of work	10

<b>Qualifications and Expertise</b>	<b>Maximum Number of Points</b>
Recent successful experience with a higher education institution; preferably a Carnegie R1 institution	10
Background and experience of individual(s) assigned to project	10
Familiarity with the University of Hawaii research enterprise	5

### **Price**

A pricing formula shall be used to allot points based on the Offeror's price and the price of the lowest bidder.

The proposal that offers the lowest price shall receive the designated maximum available points for this particular section. The points allocated to higher priced proposals shall be equal to the lowest proposal price multiplied by the maximum points available for proposal cost which is divided by the higher proposal cost.

Example: Maximum points for cost = 25 points

Offeror A's total cost: \$50,000 (Lowest Cost) – Awarded 25 points

Offeror B's total cost: \$55,000 (Higher Cost) – Awarded 23 points ( $25 \times \$50,000 / \$55,000$ )

Offeror C's total cost: \$60,000 (Highest Cost) – Awarded 21 points ( $25 \times \$50,000 / \$60,000$ )

### **References**

The References category will be scored by selecting up to three of the Offeror's previous or current customers, and factoring their responses to standardized questions, into the evaluation.

#### **4.4 BASIS FOR SELECTION AND AWARD OF AN AGREEMENT FOR SERVICES**

The RCUH will select and attempt to negotiate a mutually acceptable Agreement for Services with the first-ranked Offeror. If this cannot be accomplished within 21 calendar days after initial Selection, the RCUH reserves the right to terminate contract negotiations with the first-ranked Offeror, and may select the second-ranked Offeror for negotiation of a potential award. This process may continue in order of Offeror ranking until a mutually acceptable Agreement for Services is achieved with the RCUH and an award is made to a selected Offeror.

#### **4.5 ORAL PRESENTATIONS**

[RESERVED]

#### **4.6 REQUIREMENTS FOR AN AGREEMENT FOR SERVICES WITH THE RESEARCH CORPORATION OF THE UNIVERSITY OF HAWAII**

The selected Offeror must submit the following documentation prior to execution of an Agreement for Services with the Research Corporation of the University of Hawaii:

1. Tax clearance from the Hawaii Department of Taxation and the U.S. Internal Revenue Service. *See* Section 1.7 of this RFP.
2. Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, if applicable.
3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, if applicable.

Acceptance of an Agreement for Services with the Research Corporation of the University of Hawaii requires acceptance of Attachment B – General Conditions for Services Agreements, Attachment C – Special Conditions for Services Agreements–Federal Provisions, if applicable, and Attachment D – Standards of Conduct Declaration, and Attachment E – Other Special Conditions. Necessary forms will be provided to the selected company.

**Attachment A. Notice of Intent to Submit a Proposal**  
(May be sent by email or fax.)

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_

Email.: \_\_\_\_\_

- [ ] I acknowledge receipt of Request for Proposal No. \_\_\_\_\_ and my company intends to submit a proposal prior to the Closing Date for Receipt of Proposals. I acknowledge the requirements for a services agreement with the Research Corporation of the University of Hawaii, including submittal of a price proposal; State of Hawaii Department of Taxation and Internal Revenue Service tax clearances; Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters; Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions; Standards of Conduct Declaration; and acceptance of the General Conditions for Services Agreements and the Special Conditions for Services Agreements (Federal Provisions).
- [ ] I acknowledge receipt of Request for Proposal No. \_\_\_\_\_ but my company is not submitting a proposal.

Submitted by:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Title

## **Attachment B. General Conditions for Services Agreements**

1. Coordination of Services by the State. RCUH, or RCUH's designee, shall coordinate the services to be provided by CONTRACTOR in order to complete the Project. CONTRACTOR shall maintain communications with RCUH or the RCUH designee, at all stages of CONTRACTOR's work, and submit to RCUH or the RCUH designee, for resolution, any questions which may arise regarding this Agreement, including but not limited to CONTRACTOR's performance of this Agreement.
2. Relationship of Parties; Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
  - a. In the performance of services required under this Agreement, CONTRACTOR shall be an "independent contractor", with the authority and responsibility to control and direct the performance and details of the work and services required under this Agreement; however, RCUH shall have a general right to inspect work-in-progress to determine whether in RCUH's opinion, the services are being performed by CONTRACTOR in accordance with the provisions of this Agreement. It is understood that RCUH does not agree to use CONTRACTOR exclusively, and that CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with RCUH.
  - b. CONTRACTOR, and CONTRACTOR's employees and agents, shall not be considered agents or employees of RCUH for any purpose, and CONTRACTOR's employees and agents shall not be entitled to claim or receive from RCUH any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to RCUH employees.
  - c. CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of its performance under this Agreement. Furthermore, CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability (if such liability is determined to exist) to CONTRACTOR's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by CONTRACTOR, or CONTRACTOR's employees or agents in the course of their employment.
  - d. CONTRACTOR shall be responsible for payment of all applicable federal, state and county taxes and fees which may become due and owing by CONTRACTOR by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments and taxes, and (iii) general excise taxes. CONTRACTOR is further responsible for obtaining all licenses, permits, and certificates that may be required by reason of this Agreement, including but not limited to a general excise tax license from the Department of Taxation, State of Hawaii.
  - e. CONTRACTOR shall be responsible for securing any and all insurance coverage for CONTRACTOR and CONTRACTOR's employees and agents which is, or may be, required by law. CONTRACTOR shall further be responsible for payment of all premiums, costs and other liabilities associated with securing said insurance coverage.

3. Personnel Requirements.
  - a. CONTRACTOR shall secure, at CONTRACTOR's own expense, all personnel required to perform the services required by this Agreement.
  - b. CONTRACTOR shall ensure that CONTRACTOR's employees and agents are experienced and fully qualified to engage in the activities and services required under this Agreement, and that all applicable licensing and operating requirements imposed or required under federal, state and 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 Agreement, including any subcontractor, employee or agent of CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state or county law.
5. Subcontracts and Assignments. CONTRACTOR shall not assign or subcontract any of CONTRACTOR's duties, obligations, or interests under this Agreement without the prior written consent of RCUH. Additionally, no assignment by CONTRACTOR of CONTRACTOR's right to compensation under this Agreement shall be effective unless and until the assignment is approved in writing by RCUH, and a tax clearance is submitted by the assignee. RCUH must also approve, in writing, all other assignment or subcontract agreements entered into by CONTRACTOR's assignees and subcontractors, prior to execution.
6. Conflict of Interest. CONTRACTOR represents that neither CONTRACTOR, nor any employee or agent of CONTRACTOR, presently has any interest (and promises that no such interest, direct or indirect, shall be acquired), which would or might conflict in any manner or degree with the performance of CONTRACTOR's services under this Agreement.
7. Modifications of Agreement. Any modification, alteration, amendment, change, or extension to any term, provision, or condition of this Agreement shall be made only by written amendment to this Agreement, signed by CONTRACTOR and RCUH. No modification, alteration, amendment, change or extension to any term, provision, or condition of this Agreement, signed by any persons, including the University of Hawaii, shall be binding on RCUH unless signed by an authorized official of RCUH.
8. Suspension of Agreement. RCUH reserves the right at any time and for any reason to suspend all or any part of the performance required by this Agreement for any reasonable period, upon written notice to CONTRACTOR. Upon receipt of said notice, CONTRACTOR shall immediately comply with said notice and suspend all such work under this Agreement at the time stated.
9. Termination of Agreement for Default.
  - a. If CONTRACTOR breaches this Agreement by failing to satisfactorily fulfill in a timely or proper manner CONTRACTOR's obligations under this Agreement, or failing to perform any of the promises, terms, or conditions of this Agreement, and having been given reasonable notice of and opportunity to cure such default, fails to take satisfactory corrective action within the time

specified by RCUH, RCUH shall have the right to terminate this Agreement in whole or in part, by giving written notice to CONTRACTOR of such termination at least seven (7) calendar days before the effective date of such termination. In the case of a partial termination, CONTRACTOR shall continue performance of this Agreement to the extent it is not terminated.

- b. CONTRACTOR shall, within four (4) weeks of the effective date of such termination (or within four (4) weeks of the scheduled expiration of the time of performance specified in this Agreement, whichever is earlier), compile and submit in an orderly manner to RCUH an accounting of the work performed up to the effective date of termination or expiration. In such event, CONTRACTOR shall be paid for the actual cost of the services rendered, but in no event more than the total compensation payable to CONTRACTOR under this Agreement.
- c. As of the date of termination provided in the notice, CONTRACTOR shall incur no further obligations in connection with the terminated performance, and CONTRACTOR shall stop performance to the extent specified. CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance, subject to RCUH's approval. RCUH may choose to direct CONTRACTOR to assign CONTRACTOR's right, title, and interest under terminated orders or subcontracts to RCUH.
- d. CONTRACTOR shall not be relieved of liability to RCUH for damages sustained because of any breach by CONTRACTOR of this Agreement, including but not limited to RCUH's procurement of similar goods and services in a manner and upon terms deemed appropriate by RCUH. In such an event, RCUH may retain any amounts which may be due and owing to CONTRACTOR until such time as the exact amount of damages due to RCUH from CONTRACTOR has been determined. RCUH may also set off any damages so determined against the amounts retained.
- e. Upon termination of this Agreement (or upon the scheduled expiration of the time of performance specified in this Agreement, whichever is earlier), all finished and unfinished material prepared by CONTRACTOR shall, at RCUH's option, become RCUH's property and, together with all material, if any, provided to CONTRACTOR by RCUH, shall be delivered and surrendered to RCUH on or before the expiration date or date of termination. For purposes of this Agreement, "material" includes but is not limited to any information, data, reports, summaries, tables, maps, charts, photographs, films, graphs, studies, recommendations, program concepts, titles, scripts, working papers, files, models, audiotapes, videotapes, computer tapes, cassettes, diskettes, documents, and records developed, prepared, or conceived by CONTRACTOR in connection with this Agreement, or furnished to CONTRACTOR by RCUH. Additionally, CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property and materials in the possession of CONTRACTOR, in which RCUH has an interest.

10. Termination of Agreement for Convenience.

- a. RCUH may terminate this Agreement without statement of cause at any time, in whole or in part, by giving written notice to CONTRACTOR of such termination at least thirty (30) calendar

days before the effective date of such termination. In the event of a partial termination, CONTRACTOR shall continue performance of this Agreement to the extent it is not terminated.

- b. Upon termination of this Agreement, CONTRACTOR shall, within four (4) weeks of the effective date of such termination, compile and submit in an orderly manner to RCUH an accounting of the work performed up to the effective date of termination. In such event, CONTRACTOR shall be paid for the actual cost of the services rendered, but in no event more than the total compensation payable to CONTRACTOR under this Agreement.
  - c. As of the date of termination provided in the notice, CONTRACTOR shall incur no further obligations in connection with the terminated performance, and CONTRACTOR shall stop performance to the extent specified. CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance, subject to RCUH's approval. RCUH may choose to direct CONTRACTOR to assign CONTRACTOR's right, title, and interest under terminated orders or subcontracts to RCUH.
  - d. All finished and unfinished material prepared by CONTRACTOR shall, at RCUH's option, become RCUH's property and, together with all material, if any, provided to CONTRACTOR by RCUH, shall be delivered and surrendered to RCUH on or before the date of termination. For purposes of this Agreement, "material" includes but is not limited to any information, data, reports, summaries, tables, maps, charts, photographs, films, graphs, studies, recommendations, program concepts, titles, scripts, working papers, files, models, audiotapes, videotapes, computer tapes, cassettes, diskettes, documents, and records developed, prepared, or conceived by CONTRACTOR in connection with this Agreement, or furnished to CONTRACTOR by RCUH. Additionally, CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property and materials in the possession of CONTRACTOR, in which RCUH has an interest.
11. Compliance with Laws. 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, which in any way affect CONTRACTOR's performance of this Agreement.
  12. Indemnification and Defense. CONTRACTOR shall defend, indemnify, and hold harmless RCUH, the University of Hawaii, the State of Hawaii, and the Project, and their respective officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees and costs, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of CONTRACTOR or CONTRACTOR's employees, officers, agents, or subcontractors, occurring during or in connection with the performance of CONTRACTOR's services under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.
  13. Disputes. No dispute arising under this Agreement may be sued upon by CONTRACTOR until after CONTRACTOR's written request to RCUH to informally resolve the dispute is rejected, or until ninety (90) days after RCUH's receipt of CONTRACTOR's written request, whichever occurs first.

While RCUH considers CONTRACTOR's written request, CONTRACTOR agrees to proceed diligently with the provision of services necessary to complete the scope of services described in Attachment 1.

14. Confidentiality of Material.

- a. All material given to or made available to CONTRACTOR by virtue of this Agreement, whether oral or written, and which is identified as proprietary or confidential information, will be safeguarded by CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of RCUH.
- b. All information, data, or other material provided by CONTRACTOR to RCUH, which is identified as proprietary or confidential, shall be kept confidential to the extent permitted by law.

15. Ownership and Intellectual Property Rights.

- a. **Physical Material.** The University of Hawaii shall have complete ownership of all physical material, both finished and unfinished, which is acquired, developed, prepared, or assembled by CONTRACTOR pursuant to this Agreement, unless the provisions of the Project's Prime Award (grant/contract awarded directly by the federal government), if any, requires that title to physical material vest in another party. If determined by RCUH to be necessary, CONTRACTOR and RCUH shall execute any and all documents necessary to establish the University of Hawaii or other required party as the owner of the material, without the need for any additional consideration.
- b. **Patentable Inventions.**
  - i. **Rights to Patentable Inventions.** The rights to patentable inventions shall be determined in accordance with the provisions of the Project's Prime Award, if any. If the Prime Award is subject to the applicable regulations governing patents and inventions incorporated in 37 CFR 401, the term "subcontractor" shall be substituted for "contractor" throughout 37 CFR 401, unless the context of the clause requires otherwise. It is intended that 37 CFR 401 shall apply to CONTRACTOR in such a manner as is necessary to: (1) reflect the position of CONTRACTOR as a subcontractor to RCUH, (2) insure CONTRACTOR's rights under 37 CFR 401 and its obligations to RCUH, the Project, and the United States government, and (3) enable the Project to meet its obligations under its Prime Award. In the absence of ownership provisions in the Prime Award, or if the Project is supported by other funds, the ownership of patentable inventions developed pursuant to this Agreement will be determined under applicable U.S. law. If determined by RCUH to be necessary, CONTRACTOR and RCUH shall execute any and all documents necessary to establish the rights to the patentable inventions, without the need for any additional consideration.
  - ii. **Licensing of Patentable Inventions.** CONTRACTOR agrees to grant and hereby does grant to the University of Hawaii an irrevocable, royalty-free, non-transferable, non-exclusive right and license to use, make, have made, and distribute any patentable invention first conceived or reduced to practice in the performance of this Agreement.

- c. Copyrights. The University of Hawaii shall have complete ownership of all copyright material (including but not limited to any computer software and its documentation and/or databases) that is developed or prepared by CONTRACTOR for RCUH pursuant to this Agreement, and all such material shall be considered “works-made-for-hire.” All such material shall be delivered to RCUH upon expiration or termination of this Agreement. CONTRACTOR, however, may use thereafter any ideas and techniques that may be embodied in such works. To the extent the material is not recognized as a “work-made-for-hire” as a matter of law, CONTRACTOR hereby assigns to the University of Hawaii any and all copyrights in and to the material. If determined by RCUH to be necessary, CONTRACTOR and RCUH shall execute any and all documents necessary to establish the University of Hawaii as the owner of the material, without the need for any additional consideration.
16. Publicity. CONTRACTOR shall not refer to RCUH, the University of Hawaii, the Project, or any office, agency, or officer thereof, or to the services provided pursuant to this Agreement, in any of CONTRACTOR’s brochures, advertisements, or other publicity of CONTRACTOR. All media contacts with CONTRACTOR about this Agreement shall be referred to RCUH.
17. Payment Procedures; Final Payment. All payments under this Agreement shall be made only upon (a) submission by CONTRACTOR to RCUH of original invoices specifying the amount due and certifying that services requested under this Agreement have been performed by CONTRACTOR according to this Agreement, and (b) satisfactory performance as determined by RCUH and as specified in Attachments 1, 2, and 3.
18. Tax Clearance. Final payment under this Agreement shall be subject to Section 103-53 of the Hawaii Revised Statutes, which requires a tax clearance from the Hawaii Department of Taxation and the U.S. Internal Revenue Service, stating that all delinquent taxes, if any, levied or accrued against CONTRACTOR have been paid. A tax clearance is required on final payment for agreements of \$25,000 or more. In addition to obtaining a tax clearance prior to final payment, CONTRACTOR is required to obtain a tax clearance from the Hawaii Department of Taxation and the U.S. Internal Revenue Service prior to the execution of this Agreement, if \$25,000 or more.
19. Governing Law. The validity of this Agreement and any of its terms and/or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
20. Notices. Any written notice required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid, to RCUH at its address, and to CONTRACTOR at its address, as indicated in this Agreement. A notice shall be deemed to have been received by the recipient three (3) days after mailing or at the time of actual receipt, whichever is earlier.
21. Severability. In the event that any provision of this 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 this Agreement, provided that the remaining terms and conditions of this Agreement remain legal and enforceable.

22. Waiver. The failure of RCUH to insist upon strict compliance with any term, provision or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of RCUH's right to enforce the same in accordance with this Agreement.
23. Counterparts. This 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.
24. Federal Provisions. If federal funds are expended under this Agreement, CONTRACTOR shall comply with the applicable provisions of Attachment C.

## **Attachment C. Special Conditions for Services Agreements**

### **FEDERAL PROVISIONS**

1. If federal funds (under a federal grant) are expended under this Agreement, CONTRACTOR shall comply with the applicable provisions of RCUH [Attachment 32a](#).
2. If federal funds (under a federal prime contract) are expended under this Agreement, CONTRACTOR shall comply with the applicable provisions of RCUH [Attachment 32b](#).
3. If federal funds (under a cost-type prime cost reimbursable contract) are expended under this Agreement, and CONTRACTOR is a commercial entity in possession of government property, CONTRACTOR shall comply with the applicable provisions of RCUH [Attachment 32c](#).
4. If federal funds (under a cost-type prime cost reimbursable contract) are expended under this Agreement, and CONTRACTOR is an educational or nonprofit entity in possession of government property, CONTRACTOR shall comply with the applicable provisions of RCUH [Attachment 32d](#).

The aforementioned federal provisions can be found at: <https://www.rcuh.com/document-library/2-000/>.

## Attachment D. Standards of Conduct Declaration

For purposes of this declaration:

“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 percent (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. “Employee” includes RCUH and UH employees. (HRS § 84-3).

On behalf of \_\_\_\_\_ (CONTRACTOR), the undersigned does declare, under penalty of perjury, as follows:

1. CONTRACTOR (is) (is not) a legislator, an employee, or a business in which a legislator or employee has a “Controlling interest”. (HRS § 84-15(a)).
2. CONTRACTOR (is) (is not) a UH employee. Under 2 C.F.R. § 200.459 Professional service costs, a UH employee cannot be hired as an independent contractor on a project funded by a federal agency.
3. CONTRACTOR has not been represented or assisted personally on matters related to this Agreement by an individual who has been an employee of RCUH or UH within the preceding two years, and who participated while so employed in the matter with which this Agreement is directly concerned. (HRS § 84-15(b)).
4. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement, and *will not* be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Agreement, if the legislator or employee was involved in the development or award of this Agreement. (HRS § 84-14(d)).
5. CONTRACTOR has not been represented on matters related to this Agreement, for a fee or other consideration by an individual who, within the past twelve (12) months, served as a legislator or RCUH or UH employee, and participated while a legislator or RCUH or UH employee on matters related to this Agreement. (HRS §§ 84-18(b) and (c)).

CONTRACTOR understands that the Agreement to which this document is attached is voidable on behalf of the RCUH if the Agreement 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 above declarations. Additionally, any fee, compensation, gift, or profit received by any person as a result of violating the Code of Ethics may be recovered by RCUH.

Date:       , 20       .

CONTRACTOR

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By

Its

(Title)

\* Reminder to the Project: If the "(is)" in No. 1, above, is selected, and this Agreement involves goods or services of a value in excess of \$10,000, this Agreement must be awarded by a competitive sealed bid or proposal. Otherwise, the Project may not enter into this Agreement unless it posts a notice of intent to award this Agreement and files a copy of the notice with the Hawaii State Ethics Commission at least 10 days before this Agreement is awarded. (HRS § 84-15(a)).

## ATTACHMENT E – OTHER SPECIAL CONDITIONS

### DATA SHARING PROTECTIONS AND REQUIREMENTS

#### 1. Definitions.

Agreement. “Agreement” refers to that agreement between the University of Hawaii (“University”) and the Vendor (as hereinafter defined) to which these Data Sharing Protections and Requirements is attached.

Data. “Data” is defined as information or data elements that are created, received, maintained, and/or transmitted by the University in the course of meeting its administrative and academic requirements and includes, without limitation, non-public information, student data, metadata, and user content. Data may fall into one of four data classification categories, as set forth in the University’s Executive Policy EP 2.214, which definitions are incorporated herein by reference.

De-Identified Data. “De-Identified Data” is Data that excludes all direct personal identifiers such that the identity of any individual is not recognizable. At a minimum, all of the following personal identifiers must be removed to constitute De-Identified Data:

1. Names;
2. Geographic information (e.g., address, city, county, zip code, precinct);
3. Dates related to an individual (e.g., birth date, admission date, discharge date, death date, all ages over 89);
4. Phone number;
5. Fax number;
6. Email;
7. Social security number (SSN);
8. Medical record number;
9. Health plan beneficiary number;
10. Account numbers;
11. Certificate/license numbers;
12. VIN and license plate numbers;
13. Device IDs and serial numbers;
14. URLs;
15. IP address;
16. Biometric identifiers;
17. Full face photos and comparable images; and
18. Any other unique number, characteristic, or code.

PII. “Personally Identifiable Information” or “PII” is any information identified as personally identifiable information under the Family Educational Rights and Privacy Act of 1974 (“FERPA”) or applicable state law.

Vendor. "Vendor" shall refer to the party who is contracting with the University to receive Data from the University, including all of its officers, employees, agents, and representatives.

2. Identification of Data. The University shall transmit only the following Data pursuant to this Agreement: \_\_\_\_\_.
  
3. Purpose of Data Sharing. The Data shall be used only for the following purpose(s) and for no other purpose(s) without the prior written consent of the University, which may be withheld in the University's sole discretion: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.
  
4. Ownership of Data. The University shall maintain ownership of the Data, and all proprietary rights to the Data, including intellectual property rights, shall be and remain in the University.
  
5. Transmission of Data. All Data transmitted hereunder shall be by secure means and shall be encrypted.
  
6. No Warranties. The University makes no representations or warranties of any kind or nature, express or implied, regarding the Data, including, without limitation, its quality or fitness for any particular purpose. In no event shall the University be liable for VENDOR's use of the Data as set forth herein.
  
7. Data Confidentiality. VENDOR shall treat the Data as confidential and shall implement appropriate measures designed to ensure the confidentiality of the Data, including, without limitation, restricting access to only personnel who require such access and the use of such Data to perform the activities permitted hereunder and requiring personnel with access to the Data to sign written confidentiality agreements.
  
8. Network Security. VENDOR shall maintain network security sufficient to protect the Data and in conformance with generally recognized industry standards and best practices, including, without limitation: (a) network firewall provisioning; (b) maintaining patched environments with appropriate security updates; (c) intrusion detection; and (d) regular (three or more annually) third party vulnerability assessments.
  
9. Application Security. VENDOR shall maintain and regularly update its software such that applications remain secure from vulnerabilities identified in updates, upgrades, and bug fixes.
  
10. Data Security. VENDOR shall implement measures to secure the Data including, without limitation: (a) ensuring the transmission and storage of Data by secure means, including

encryption of all Data; (b) maintaining the Data on designated secure servers; (c) prohibiting the storage of Data on portable or laptop computing devices or similar mediums unless that medium is used as part of a backup and recovery process; (d) requiring the storage, backup, and network paths utilized for the Data be contained within the United States; (e) adopting policies to secure the Data from unauthorized access and to address breaches; (f) transmitting, storing and processing the data in accordance with industry best practices; and (g) conducting regular (three or more annually) risk assessments.

11. Disclosure to Third Parties Prohibited. VENDOR shall not reveal, transmit, exchange, or share the Data with third parties unless VENDOR has obtained the University's prior written consent; provided, that if VENDOR obtains the University's prior written consent, VENDOR shall enter into a written agreement with such third party that requires and ensures that the third party maintain at least the same level of Data protection, security, confidentiality, and indemnification as is required of VENDOR herein.

12. De-Identified Data Requirements.

a) No Re-Identification. VENDOR shall not take any steps to re-identify De-Identified Data, and shall ensure that all personnel do not re-identify De-Identified Data. In the event that De-Identified Data is re-identified, whether intentionally or inadvertently, VENDOR shall promptly notify the University within forty-eight (48) hours of discovery, take all measures necessary to protect and secure any PII, assume financial responsibility for any potential or actual breach or exposure, and fully indemnify, defend, and hold harmless the University, as further set forth herein. VENDOR shall not utilize any re-identified De-Identified Data or PII to contact individuals. Re-identification of De-Identified Data shall be grounds for immediate termination.

b) Publication of De-Identified Data. In the event VENDOR desires to include De-Identified Data in any publication, VENDOR shall provide a copy of such publication to the University and obtain the University's prior written consent, which may be withheld in the University's sole discretion.

c) Use of Large De-Identified Data Groups. De-Identified Data shall not be transmitted or used in groups of fewer than ten (10) Students, so as to protect against the potential re-identification of individuals.

13. Destruction of Data. Upon termination of this Agreement, written request from the University, or cessation of any need for the Data, whichever occurs first, VENDOR shall erase, destroy, and render unreadable all Data provided to VENDOR under this Agreement, in a manner that prevents reconstruction or re-identification of such Data. Within thirty (30) days of a request from the University, VENDOR shall provide written certification that these actions to erase, destroy, and render unreadable all Data have been complied with.

14. Compliance with Applicable Laws. VENDOR shall observe and comply with all applicable laws, statutes, ordinances, orders, directives, rules, and regulations, now or hereafter made by any governmental authority (“Applicable Laws”) regarding data security and protection.
15. Compliance with Applicable University Policies. VENDOR shall observe and comply with all applicable University policies, including, without limitation, Executive Policy EP 2.214 (Institutional Data Classification Categories and Information Security Guidelines) and Executive Policy EP 2.215 (Institutional Data Governance) and Administrative Procedure AP 7.022 (Procedures Relating to Protection of the Educational Right and Privacy of Students).
16. Data Breach. VENDOR shall comply with all Applicable Laws, including without limitation, Hawaii Revised Statutes 487N, requiring notification in the event of the unauthorized release of PII or Data, or other event requiring notification. Upon the occurrence of such event, VENDOR shall (a) notify the University by telephone and email within forty-eight (48) hours of discovery, (b) assume financial responsibility and liability for the unauthorized disclosure, release, exposure, and/or breach, and (c) fully indemnify, defend, and hold harmless the University, as further set forth herein. VENDOR shall pay all such associated costs necessary to address and provide relief of and from the adverse effects of such actual, probable, or suspected breach, exposure, disclosure, or release of the Data, including, without limitation, the costs of notifying all affected individuals and entities and making credit monitoring and restoration services available to such affected individuals and entities, as required by the University and/or Applicable Laws.
17. Indemnification. VENDOR shall indemnify, defend with counsel reasonably acceptable to the University, and hold harmless the University, its officers, employees, agents, representatives, and any person acting on its behalf from and against any and all claims, demands, suits, actions, causes of action, judgments, injunctions, orders, rulings, directives, penalties, assessments, liabilities, losses, damages, costs, and expenses (including, without limitation, reasonable attorneys’ fees, expert witness fees and costs, discovery and pretrial costs, and costs incurred in the investigation, prosecution, defense, and/or handling of any action) by whomsoever incurred, sustained, or asserted, including claims for property damage, personal injury, bodily injury, death, lost revenues, and other economic loss and/or environmental damage, directly or indirectly arising from or related in any way to: (a) the sharing and making available of the Data hereunder; (b) VENDOR’s use, handling, transmission, storage, and processing of any Data; (c) VENDOR’s unauthorized use, handling, transmission, storage, processing, disclosure, release, and/or exposure of Data; and/or (d) VENDOR’s failure to timely, fully and properly perform any of its obligations under this Agreement, particularly any obligations relating to Data sharing and protection.
18. Mandatory Disclosure of PII. In the event VENDOR becomes compelled by law or government directive to disclose any PII, VENDOR shall provide the University with immediate written notice

so that the University may seek an appropriate protective order or other remedy. VENDOR shall only furnish that portion of the PII necessary to comply with the law or directive.

19. Injunctive Relief. Violation of any terms herein, including the actual or potential disclosure, release, and/or exposure of Data, may cause the University irreparable injury for which there is no adequate remedy at law, and consequently the University is entitled to seek immediate injunctive relief prohibiting such violation, in addition to any other rights available to it. VENDOR hereby waives any requirement to post a bond with respect to any action for injunctive relief.

20. Survival. All VENDOR's obligations herein to protect and secure Data, as well as to assume financial responsibility and liability for any unauthorized use, handling, transmission, storage, processing, disclosure, release, and/or exposure of Data and to indemnify, defend, and hold harmless the University hereunder, shall survive termination or expiration of this Agreement.