

MASTER AGREEMENT

BETWEEN

AND

THE RESEARCH CORPORATION OF THE UNIVERSITY OF HAWAII

This MASTER AGREEMENT is entered into this _____ day of _____ "effective date", by and between _____, hereinafter called "Client", a _____, whose principal place of business and mailing address is _____, and The Research Corporation of the University of Hawaii, hereinafter called "RCUH," a body corporate and public instrumentality of the State of Hawaii, whose principal place of business and mailing address is 1601 East-West Road, Burns Hall 4th Floor, Makai Wing, Honolulu, Hawaii 96848.

WITNESSETH:

WHEREAS, from time to time Client will require administrative services that include personnel, procurement and accounting services;

WHEREAS, Client wishes to engage RCUH to provide administrative services;

WHEREAS, RCUH is willing to provide administrative services to Client on the terms and conditions hereinafter set forth.

NOW, THEREFORE, Client and RCUH agree as follows:

This MASTER AGREEMENT sets forth the overall responsibilities of each party in the management and administration of project(s), for which RCUH's administrative services are sought. Specific requirements for each project shall be described in and be the subject of a separate agreement set forth in a prescribed Project Task Order Form, a copy of which is attached hereto as Exhibit A and incorporated herein by reference. The Project Task Order shall be executed by the duly authorized officials of Client and RCUH.

If there is any conflict between the terms and conditions of this MASTER AGREEMENT and a PROJECT TASK ORDER, the terms and conditions of this MASTER AGREEMENT shall prevail.

1. Services to be provided by RCUH

RCUH shall establish a direct project account (Project) for each accepted Project Task Order. RCUH will provide personnel, procurement and accounting services at the direction of and with the approval of Client through its designated Principal Investigator (PI), as defined in Section 2b of this Agreement, or his/her designee.

- a. At the direction of the PI, RCUH shall assist with the recruitment and hiring of staff (Project Employees) for the Project as required by Client and in accordance with all applicable federal and State of Hawaii laws, rules and regulations, and RCUH policies and procedures generally applicable to the Project Employees, except as modified in writing by the parties hereto. The Project Employees shall be under the administrative and technical supervision of the PI. RCUH, acting as agent of Client, agrees to employ Project Employees on behalf of Client.
- b. Project Employees hired by RCUH on behalf of Client shall be RCUH employees. The Conditions of Employment for Project Employees will be as stated in the RCUH Policies and Procedures.
- c. RCUH shall process the payroll for the Project Employees, including filing of the payroll tax reports with the appropriate federal and state agencies.
- d. RCUH shall be responsible for payment of applicable income, social security and any other federal, state or county taxes and fees related to the Project Employees. RCUH agrees to calculate and pay salaries, fringe benefits and taxes to and on behalf of the Project Employees.
- e. RCUH shall administer the employee benefit programs for the Project Employees. Such programs shall be explained to the Project Employees by RCUH.
- f. RCUH shall procure goods and services, and make disbursements as directed by the PI and in accordance with federal and State of Hawaii laws and regulations, and RCUH policies and procedures. RCUH will maintain the books of original entry and official records of all such commitments and disbursements.
- g. RCUH shall provide PI with access to expenditure and financial status reports. These reports shall include budget status, details of expenditures and outstanding commitments.
- h. The RCUH shall provide PI an annual inventory report for controlled properties and equipment purchased on behalf of Client.

2. Responsibilities of Client

- a. Client shall oversee, direct and authorize the performance of the activities of the Project. Client shall ensure that sufficient funds are provided for conducting these activities. Client shall comply with all applicable federal, State of Hawaii laws and regulations, and RCUH policies and procedures as provided on the RCUH website: www.rcuh.com.
- b. Client shall designate a PI who shall be an employee or an authorized official of Client. Client shall notify RCUH in writing of any changes in PI. The PI is authorized to appoint a designee to act on his/her behalf, who shall be an employee or authorized official of Client. Designee appointment shall be in writing to RCUH stating the effective date and duration of such appointment.

The PI is the lead scientist/researcher/subject matter expert responsible for managing and supervising the work and activities of the Project. The PI shall ensure that the work performed and costs charged to the Project are proper and in accordance with federal and State of Hawaii laws and regulations, RCUH policies and procedures, and within the funding limits of the approved Project budget.

- c. Supervision of the Project and the Project Employees hired for the Project shall be the responsibility of the PI and Client. Client is solely responsible for the actions of the PI and the Project Employees.
- d. Client shall be responsible for the accuracy, completeness, and adequacy of any and all work and services performed by the Project Employees who are under the PI's direction and supervision. Client shall comply with all applicable licensing and operating requirements of the federal, State of Hawaii and county governments and all applicable accreditation and other standards of quality generally accepted in the field of Client activities that are applicable to the Project.
- e. Client is solely responsible to fulfill all the terms and conditions of any contract or grant award between Client and its sponsor. RCUH provides administrative services to Client and is not a sub-recipient or sub-contractor of Client under any prime contract or sponsored award.
- f. In the event the Project incurs a liability for failure by Client to comply with applicable legal and program requirements, Client shall be responsible for the payment of all liabilities, penalties, interest, and expenses incurred by the RCUH in connection therewith; provided, however, that Client shall not be responsible for payment of any liability that results from a RCUH officer's or non-Project Employee's action or omission to act that (a) was material to the accrual of liability and (b) constitutes gross negligence, willful misconduct, or a

violation of the criminal law; provided further that Client shall be responsible for payment of any liability resulting from the action or omission to act of a Project Employee acting under the supervision and control of the PI or, in the event of a claim or potential claim, from the Client's failure to comply with RCUH's recommended actions.

- g. Client and its PI shall be responsible for ensuring compliance with United States export control laws and regulations, which includes, but is not limited to: (1) International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130), implemented by the US Department of State; (2) Export Administration Regulations (EAR) (15 CFR Parts 770-774), implemented by the US Department of Commerce; and (3) Office of Foreign Asset Control (OFAC), which is part of the US Department of the Treasury primarily responsible for administering and enforcing economic and trade sanctions against certain nations, entities, and individuals.
- h. Client shall pay RCUH for services as set forth in this Master Agreement.

3. Term

The performance period under this Master Agreement shall be as per each Project Task Order.

Client will provide a budget for the performance period for each Project Task Order. A budget and a revised cumulative budget will be provided for any change in funding for each Project Task Order.

4. Compensation

Total compensation to be paid for each Project Task Order under this Master Agreement shall not exceed the budgeted amount stated on each Project Task Order.

RCUH shall charge a fee, as agreed upon per Project Task Order, on all costs that are processed by the RCUH on behalf of Client. This rate is subject to change with a 60 days written notice from RCUH.

Non-interest bearing advance payment that is equivalent to two-month's estimated expenditures shall be made upon full execution of each Project Task Order and receipt of RCUH invoice.

Subsequent payment shall be made monthly, based on monthly billing of actual expenditures for each Project Task Order (Project) prepared by the RCUH. Payment will be made by Client within thirty (30) days of receipt of invoice.

Advanced amounts for each Project Task Order will be refunded to Client with the Final Expenditure Report within 90 days of termination of the Project Task Order (Project).

5. Insurance

Immediately upon execution of this Master Agreement, and at all times during the term of this Master Agreement, Client agrees at its sole expense, to procure, carry and maintain the following insurance coverages. Client shall maintain in force and effect insurance coverages written by carriers with at least an A-VII Financing Rating according to the current edition of Best's Key Rating Guide.

a. Commercial General Liability Insurance

Each occurrence limit	\$1,000,000
General aggregate limit	\$2,000,000

b. Automobile Liability Insurance (owned/hired/non-owned)

Bodily injury (each person/each accident)	\$1,000,000
Property damage (each accident)	\$1,000,000

c. Umbrella/Excess Liability Insurance (coverage shall, at a minimum, "follow form" over the Commercial General Liability, Automobile Liability, and Employers' Liability Insurance policies)

Each occurrence limit	\$5,000,000
Aggregate limit	\$5,000,000

d. Workers' Compensation and Employers' Liability Insurance (applicable if Client has employees other than RCUH employees)

Workers' Compensation	Hawai'i Statutory Limits
Employers' Liability	\$1,000,000

e. Additional Insured

Client shall name RCUH, the University of Hawaii, and the State of Hawaii, and their officers, agents, affiliates, representatives, employees, and any other entities named in this Master Agreement as additional insured in respect to the Commercial General Liability, Automobile Liability and Umbrella/Excess Liability Insurance policies and assume and provide for RCUH's defense. Such insurance afforded RCUH as Additional

Insured shall be the primary insurance and not excess over, or contributing with any insurance purchased or maintained by RCUH.

f. Certificate of Insurance

Certificates of Insurance, as evidence of the insurance required by this Master Agreement shall be furnished by Client upon execution of this Master Agreement and before any work hereunder is commenced. The Certificates of Insurance shall provide that there will be no cancellation, non-renewal, reduction of coverage, or restrictive modifications added, without thirty (30) days' prior written notice. Such Certificates of Insurance shall be in a form acceptable to RCUH and shall provide satisfactory evidence that Client has complied with all insurance requirements.

g. Periodic Review of Insurance Coverage

RCUH shall have the right at any time to review the coverage, form and amount of insurance required by this Master Agreement.

h. Waiver of Subrogation

Client will require its Commercial General Liability Insurance Policy, Automobile Liability Insurance Policy, Workers' Compensation and Employers' Liability Insurance Policies, and Umbrella/Excess Liability Insurance Policy, to include clauses stating each insurance company will waive all rights of recovery, under subrogation or otherwise, against RCUH, UH, and the State of Hawaii, and their directors, officers, agents, affiliates, representatives, and employees.

6. Relationship of Parties

No association, partnership, joint venture or agency relationship is created between Client and RCUH by this Master Agreement except as expressly provided herein.

7. Assignment

Neither this Master Agreement nor any rights or obligations of either party shall be assigned or otherwise transferred by either party without the prior written consent of the other party. Nothing contained in or implied from this Master Agreement is intended to confer any rights or remedies upon any person or entity, other than the parties hereto and their successors-in-interest and permitted assigns, unless expressly stated herein to the contrary.

8. Examination of Records

RCUH and Client agree that each party or any of its duly authorized representatives shall have access to and the right to examine and audit any pertinent books, documents, papers and records of the other party involving transactions directly related to each Project under this Master Agreement for a period of five (5) years following termination of each Project Task Order (Project).

9. Changes and Modification to the Agreement

Any modification, alteration or change to this Master Agreement, including modification of the services to be performed or extension of time of performance, shall be made only by written amendment(s) executed by both parties. All amendments signed by both parties shall become an integral part of this Master Agreement.

10. Termination of the Agreement

Either party to this Master Agreement shall have the right, with or without cause, to terminate this Master Agreement at any time upon written notice given ninety (90) days in advance of such termination. In the event of such termination, the total amount to be paid to RCUH shall be determined on the basis of the total work completed including, but not limited to, non-cancelable expenses incurred prior to the time of such termination.

11. Notices

All notices permitted or required by this Master Agreement shall be in writing and shall be sent by e-mail and first class mail, postage prepaid, addressed as follows:

To: _____
Attn: _____
Address: _____

Phone: _____
Email: _____

To: **The Research Corporation of the University of Hawaii**
Attn: Leonard R. Gouveia, Jr., Executive Director
Address: 2800 Woodlawn Drive, Suite 200
Honolulu, Hawaii 96822
Phone: (808) 988-8300
Email: rcuhed@rcuh.com

Any such address, contact person, telephone number or email may be changed from time to time by serving notice to the other party as above provided.

12. Indemnification and Defense

Client shall indemnify, defend and hold harmless RCUH, the University of Hawaii, the State of Hawaii, and their officers, employees, agents or any person acting on their behalf from and against: (1) any claim or demand for loss, liability or damages including, but not limited to, claims for property damage, personal injury or death, by whomsoever brought, arising from any accident or incident connected with the performance of this Master Agreement, except liability arising out of the sole negligence of RCUH or its non-Project Employees; (2) all claims, suits, and damages by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants and conditions herein or the rules, regulations, ordinance and laws of the federal, state, municipal or county government. Furthermore, Client shall reimburse RCUH and its officers, employees, agents or any person acting on their behalf all attorney's fees, costs and expenses incurred in connection with defense of any such claims.

This section on indemnification and defense shall remain in full force and effect notwithstanding the expiration or early termination of this Master Agreement.

13. Confidentiality of Material

To the extent permitted by applicable law, including but not limited to Chapter 92F, Hawaii Revised Statutes, any information, data, report, record, or other information or material given to or prepared or assembled by RCUH under this Master Agreement shall not be made available to any individual or organization by RCUH without the prior written consent of Client, provided that such consent shall not be unreasonably withheld.

14. Compliance

The parties understand and agree that they are required to comply with applicable federal, state and local laws, statutes, ordinances, rules, regulations governing equal employment opportunity, nondiscrimination, and immigration.

15. Non-Discrimination

No person performing work under this Master Agreement, including any subcontractors, employees or agents of Client, shall engage in any discrimination that is prohibited by any applicable federal, state or county laws, rules or regulations.

16. Force Majeure

The parties shall not be liable for any unforeseeable event beyond their reasonable control not caused by the fault or negligence of such party, which causes such party to be unable to perform its obligations under this Master Agreement, and which it has been unable to overcome by the exercise of due diligence. In the event of the occurrence of such a force majeure event, the party unable to perform shall promptly notify the other party. It shall further use its best efforts to resume performance as quickly as possible and shall suspend performance only for such period of time as is necessary as a result of the force majeure event.

17. Governing Law

The validity of this Master 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.

18. Language

This Master Agreement is in the English language and no translation into any other language shall be used in its interpretation.

19. Waiver

The failure of either party to insist upon strict compliance with any term, provision or condition of this Master Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of its right to enforce the same in accordance with this Master Agreement.

20. Severability

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

21. Entire Agreement

This Master Agreement sets forth all the agreements, conditions, understandings, promises, warranties, and representations between Client and RCUH relative to this Master Agreement. This Master Agreement supersedes any and all prior agreements, conditions, understandings, promises, warranties and representations, oral or written, express or implied, between the parties, other than as set forth or as referred to herein.

IN WITNESS WHEREOF, the parties have executed this Master Agreement, as of the day and year first above written.

By _____
Name: _____
Its: _____

Research Corporation of the University of Hawaii

By _____
Name: Leonard R. Gouveia, Jr.
Its: Executive Director