

MASTER AGREEMENT BETWEEN THE STATE OF HAWAII  
AND  
THE RESEARCH CORPORATION OF THE UNIVERSITY OF HAWAII

This MASTER AGREEMENT made on the 17<sup>th</sup> day of April, 1995, is entered into by and between the STATE OF HAWAII (hereinafter referred to as the "STATE"), on behalf of all Executive Branch departments and agencies except the University of Hawai'i, and THE RESEARCH CORPORATION OF THE UNIVERSITY OF HAWAII (hereinafter referred to as "RCUH").

W I T N E S S E T H:

WHEREAS, RCUH is a public instrumentality and body corporate established pursuant to Act 209, 1965 Session Laws of Hawaii (codified in Chapter 307, Hawaii Revised Statutes), to promote all educational, scientific, and literary pursuits by:

- encouraging, initiating, aiding, developing, and conducting scientific investigations and research in the physical, biological, and social sciences, and humanities, and all other branches of learning;
- encouraging and aiding in the education and training of persons for the conduct of such investigations, research, and study;
- furnishing of means, methods, and agencies by which the investigation, research, and study may be conducted;
- assisting in the dissemination of knowledge by establishing, aiding, and maintaining professorships, or other staff positions, fellowships, scholarships, publications, lectures;
- other means to make the benefits of investigations, research, and study available to the public; and
- any and all other acts reasonably designed to promote the above purposes in the interest of promoting the general welfare of the people of the State;

WHEREAS, the STATE, in the conduct of various educational, developmental, research, and management activities that are at an intellectual level generally conducted by a university, from time to time has need of RCUH's specialized administrative services;

WHEREAS, RCUH is willing, able and available to perform those services; and,

WHEREAS, Act 97, 1994 Session Laws of Hawaii, added a new § 307-10 to Chapter 307, Hawaii Revised Statutes, which requires the inclusion of the following in any contract between RCUH and Executive Branch departments and agencies:

- (1) Termination date of the contract,
- (2) Intent and purpose of the contract,
- (3) Statement establishing the full permissible extent of the contract's applicability, and
- (4) Description of the circumstances under which the contract may be amended or extended;

NOW THEREFORE, in consideration of the mutual agreements set forth herein, the STATE and RCUH enter into this MASTER AGREEMENT under the following terms and conditions:

1. Objectives. This MASTER AGREEMENT sets forth the overall responsibilities of each party in the administration of projects initiated by an Executive Branch department or agency (excluding the University of Hawai'i) for which RCUH's services are sought. Specific requirements related to scope, timing, and payment of each separate project shall be described in and be the subject of a separate written project agreement ("project agreement"). The project agreement for each project shall be executed by RCUH and an authorized official of the applicable Executive Branch department or agency. If there is any conflict between the terms and conditions of this MASTER AGREEMENT and a project agreement, the terms and conditions of this MASTER AGREEMENT shall prevail.

2. Guidelines. In determining whether it is appropriate to seek RCUH services for a particular project, an Executive Branch department or agency must first determine that the project is of an intellectual level generally conducted by the University of Hawai'i. In addition, Executive Branch departments and agencies shall apply the following criteria to the projects in determining whether to seek RCUH services:

- a. The scientific investigation and/or research, which is the subject of the project must be beyond the existing capacity of the pertinent STATE program manager due to one of the following reasons:
  - (1) Lack of sufficient staff, or
  - (2) Lack of staff competency in the discipline covered by the project.
- b. If 2.a. above applies, contracting with RCUH to provide the services required for the project must be more efficient than performing the services required for the project directly through a contract with the private sector. Factors to be considered include:
  - (1) Cost (contracts with RCUH include administrative overhead costs and project management services), and
  - (2) Degree of control that the project manager retains (there are instances where it would be more appropriate and efficient for the program manager to assume a more direct oversight role).
- c. RCUH is an acceptable provider of services if the private sector route considered under 2.b. above is impractical.
- d. Projects must have all of the following characteristics:
  - (1) The nature of the research or investigation is at an intellectual level appropriate for university-level research;
  - (2) Funding for the project exceeds \$25,000;
  - (3) The project does not involve classified research;
  - (4) The STATE program manager requires professional assistance in such areas as

the development of the project scope or the formulation of effective strategies or approaches in the implementation of a project; and,

- (5) Private sector assistance for the project is inappropriate because of such factors as: lack of technical expertise: nature of the project is geared towards the public sector: or federal funding requirements or conditions can be more effectively handled by RCUH than by the private sector.

To ensure compliance with all of the foregoing criteria, prior to entering into a project agreement, an Executive Branch department or agency must furnish to RCUH a concise justification and statement of reasons on the use of RCUH services for each project. The justification and statement of reasons shall be a part of the project agreement for each such project. The scope of work included in each project agreement shall be specific and consistent with such justification.

In no event will any Executive Branch department or agency cause RCUH to operate in areas not within RCUH's statutory purposes by requesting RCUH to provide services for STATE projects or uses with the primary intent of avoiding statutory requirements (e.g. Hawaii Public Procurement code or state personnel laws) that apply to such department or agency but not to RCUH.

All services provided by RCUH shall be limited to scientific investigation and research projects and procurements for such projects, which are strictly within the express purposes for which RCUH was established.

RCUH, upon its own evaluation of the proposed project, using the provisions of Chapter 307, Hawaii Revised Statutes, and the guidelines herein, may decline to accept the project or amendments to the project. In making this evaluation, among other things, RCUH shall consider whether one or more of the following RCUH criteria are met:

- (1) The project involves temporary personnel;
- (2) To complete the research or investigation of the project will involve unusual technical/scientific/research-related procurement problems, including the authorized purchase of major items or special equipment or authorized construction of complex equipment; or,
- (3) The project involves research facility management.

Provided, however, that if a proposed project, which may meet the requirements of Chapter 307 but does not satisfy the foregoing RCUH criteria, involves special problems, such project may be accepted by RCUH upon specific approval of the RCUH Board of Directors.

3. Periodic Review of Projects. STATE and RCUH shall jointly conduct periodic reviews of ongoing projects to ensure (i) continuing appropriateness pursuant to the guidelines set forth in paragraph 2. above and (ii) compliance with the terms and conditions of this MASTER AGREEMENT. The initial review of an ongoing project, that is open and active on the effective date of this MASTER AGREEMENT, shall be conducted within 90 days following execution-of this MASTER AGREEMENT. Subsequent reviews shall be conducted at each project renewal; provided that each project shall be reviewed at intervals at

least every two years during the term of a project agreement. In the event a project fails to meet the aforesaid guidelines set forth in paragraph 2. above (including RCUH's guidelines) or fails to meet the requirements of this MASTER AGREEMENT, the project shall be subject to RCUH's withdrawal of services.

Furthermore, if RCUH determines that an Executive Branch department or agency is in breach of the sponsoring agency's terms and conditions, the project agreement, or this MASTER AGREEMENT, RCUH shall have the right to withdraw its services for the project.

4. Responsibilities of the STATE. The STATE shall be responsible for the following:
  - a. Obtain the Governor's prior written approval on all requests for RCUH's services for a project, including amendments and supplements to such requests.
  - b. Obtain the Department of the Attorney General's review as to whether use of RCUH services for the particular project is appropriate under applicable laws and, also, approval as to the form and content of the specific requirements described in the project agreement, including amendments and continuations thereof. In the event the Department of the Attorney General determines that the Hawaii Public Procurement Code is applicable to the project, STATE shall obtain a review of the project agreement by the State Procurement Policy Office.
  - c. For each project, designate a responsible employee of the pertinent Executive Branch department or agency who shall act as the principal liaison between RCUH and the pertinent department or agency to resolve policy questions and to monitor and review all progress reports and publications produced by the project.
  - d. Approve all payments made to RCUH and make the necessary funds available to RCUH. Sums for specific projects, as set forth in the project agreement for each project, including RCUH "indirect costs", may be paid to RCUH on a cost reimbursement basis.
  - e. Fulfill all the terms and conditions of the award contract, grant, etc. between the STATE and its sponsor.
  - f. Supervise the project with responsibility for completion of the scope, workplan and timing of the project, as described in the relevant award, contract, grant, etc.
  - g. STATE shall be ultimately responsible and accountable for the management and conduct of all projects covered by this MASTER AGREEMENT, including but not limited to compliance with all applicable STATE and federal (if applicable) program and legal requirements and for any penalty, including without limitation any penalty imposed under §103D-106, Hawaii Revised Statutes.

In the event a project incurs a liability for failure to comply with applicable legal and program requirements, STATE shall be responsible for the payment of all liabilities, penalties, interest, and expenses incurred by RCUH in connection therewith and will hold RCUH harmless from all such liabilities, penalties, interest, and expenses, provided, however, that the STATE shall not be responsible for payment of liabilities, penalties, interest and other expenses incurred by RCUH if the Attorney General determines that a RCUH officer's or employee's action or omission to act (a) was material to the accrual of

liability and (b) constitutes gross negligence, willful misconduct, or a violation of the criminal law.

In rendering services pursuant to this AGREEMENT, RCUH will be acting as an agent of the STATE, and not as principal; provided, however, that in the event, pursuant to authorization by law, a project is transferred to RCUH by an Executive Branch department or agency for direct management thereof by RCUH, RCUH shall act as principal, not as an agent, and RCUH shall be responsible and accountable for the management and conduct of such transferred project, including but not limited to the payment of liabilities, penalties, interest, and expenses that may be incurred by such project.

5. Responsibilities of RCUH. On an as needed basis, RCUH shall provide the following administrative services, as an agent, for the STATE's projects in accordance with the provisions of Chapter 307, Hawaii Revised Statutes:

- a. With the prior approval of the STATE, hire or contract staff that is required for the project. The project staff shall work under the control and supervision (administrative and technical) of the STATE.
- b. Provide to the pertinent Executive Branch department or agency the necessary administrative and fiscal support for the project, including:
  - (i) Accounting services, including the disbursement of funds subject to approval of the STATE;
  - (ii) Payroll accounting, including maintenance of necessary records and reports for federal, state, or county financial reporting requirements (e.g. social security, worker's compensation, unemployment compensation and payroll taxes); and,
  - (iii) If required, retirement programs, group life insurance programs, long-term disability programs and health insurance.
- c. Assist the pertinent Executive Branch department or agency with the following: procurement of goods and services, property administration, space allocation and inventory control, contract negotiations and administration, general communication, and general administrative and management services.
- d. In the event a project includes the collection of program revenues or user fees for and on behalf of the STATE, the project agreement shall expressly address the reporting, use, and disposition of such program revenues or user fees, subject to compliance with State and federal (if applicable) laws, regulations, and policies.

6. Time of Performance. Time is of the essence in the performance of the project agreements for specific projects under this MASTER AGREEMENT, and all work shall be completed as expeditiously as possible and not later than the date of completion specified by the project agreements, unless this MASTER AGREEMENT or any such project agreement is sooner terminated.

7. Compensation and Method of Payment. As full consideration of the services to be performed

by RCUH under this MASTER AGREEMENT, the STATE agrees to pay RCUH a sum of money not to exceed the amount of compensation specified by the project agreement for a specific project, which sum may be paid on a cost-reimbursement basis, including the RCUH indirect costs, in accordance with the following provisions:

- a. Indirect costs for RCUH administrative services will be budgeted in the project agreement for each individual project using applicable indirect cost rates depending on the source of funds for each agreement (e.g. federal and non-federal funds). For federal funded projects, the current negotiated federal indirect cost rate shall be used. For non-federal funded projects, the indirect cost rate shall be based on full recovery of budgeted administrative expenses (including any University of Hawai'i central administration overhead expenses paid by RCUH to University) reflecting actual pro-rata indirect costs. Such indirect cost rates may be adjusted through amendments or continuations of the project agreements.
  - b. The STATE will provide a one month non-interest bearing advance to RCUH upon receipt of an invoice in the amount of such invoice; provided that the advance shall not exceed 10% of the total funding under the project agreement. These funds need not be maintained by RCUH in a separate bank account and shall be made available to pay for project expenses as incurred by the project. The advance shall be adjusted as project requirements arise, and will be subtracted from the final billing for project close out.
  - c. Payments shall be made on a timely basis by the STATE upon presentation of monthly invoices specifying, to the satisfaction of the STATE, the charges included in the invoice amount.
8. Advance Funding.
- a. At the request and direction of an Executive Branch department or agency, RCUH may agree to advance fund a project for up to 90 days, utilizing funds available to RCUH.
  - b. The STATE shall be ultimately accountable and responsible for the authorization and use of the advance fund. In the event that the award, contract, grant, etc. between the Executive Branch department or agency and its sponsor does not materialize within a reasonable time period, the STATE shall be solely and totally responsible for payment of costs incurred against the advance fund, and the STATE shall reimburse RCUH for all expenditures incurred plus applicable indirect costs.
9. Applicable Office of Management and Budget Circulars. RCUH is a public instrumentality and a part of the University of Hawai'i for administrative purposes, as provided by §26-35, Hawaii Revised Statutes. Since RCUH acts primarily as an agent of the University of Hawai'i, as appropriate, the following Office of Management and Budget (OMB) Circulars shall apply to all projects administered by RCUH:
- a. OMB Circular No. A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations;
  - b. OMB Circular No. A-21, Cost Principles for Educational Institutions; and,

- c. OMB Circular No. A-133, Audits of Institutions of Higher Education and Other Nonprofit Organizations.

In the event a project is to be administered under OMB Circular No. A-128 (Audits of State and Local Government), the written project agreement for the project shall expressly address the specific cost principles, monitoring, reporting, and other requirements that RCUH is to provide for that project.

10. Subcontracts and Assignments. RCUH shall not subcontract, assign, or transfer any interest in all or any part of the services to be performed under this MASTER AGREEMENT without the prior written consent and approval of the STATE.

11. Confidentiality of Material. To the extent permitted by applicable law, including but not limited to Chapter 92F, Hawaii Revised Statutes (Uniform Information Practices Act, Modified), any information, data, report, record or other 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 the STATE, provided that consent shall not be unreasonably withheld.

12. Copyright and Patent. Subject to the requirements of § 307-8, Hawaii Revised Statutes, no summary, report, map, chart, graph, table, or other document or discovery, invention or development produced in whole or in part under this MASTER AGREEMENT shall be the subject of an application for copyright or patent by or on behalf of RCUH, its officers, its agents, its employees, or its subcontractors without the prior written authorization from the STATE.

13. Inspections.

- a. At all reasonable times, RCUH shall permit an authorized representative of the STATE to inspect, audit, and make copies of all books, records, summaries, reports, charts, graphs, tables, recommendations, and other documents and materials, as available, produced in whole or in part under this MASTER AGREEMENT.
- b. At all reasonable times, STATE shall permit an authorized representative of RCUH to inspect, audit, and make copies of all books, records, summaries, reports, charts, graphs, tables, recommendations, and other documents and materials, as available, produced in whole or in part under all projects covered by this MASTER AGREEMENT.

14. Disputes. Any dispute concerning a matter or acts arising under this MASTER AGREEMENT, which is not disposed of by mutual agreement by the parties within thirty (30) days, shall be decided by the Attorney General of the State of Hawaii or the Attorney General's designee, who shall reduce his/her decision to writing. Such decision shall be final and conclusive. Pending final decision on a matter in dispute, RCUH shall proceed diligently with the performance of its responsibilities under this MASTER AGREEMENT in accordance with the requests of the STATE.

15. Applicability to Projects. The terms and conditions of this MASTER AGREEMENT shall apply to all projects of an Executive Branch department or agency that have been accepted by RCUH, and any such project that fails to meet the requirements of this MASTER AGREEMENT shall be subject to RCUH's withdrawal of services; provided, however, that all projects that are open and active on the effective date of this MASTER AGREEMENT shall be reviewed for conformance with the terms and conditions of this MASTER AGREEMENT at the time of and in conjunction with the project reviews under paragraph 3. above.

16. Entire Agreement. This MASTER AGREEMENT constitutes the entire understanding between the parties (including all Executive Branch departments and agencies except the University of Hawai'i) with respect to the subject matter hereof and supersedes any and all prior understandings and agreements, oral and written, relating hereto. Any modification of this MASTER AGREEMENT must be in accord with the below paragraph on "Amendment."

17. Amendment. This MASTER AGREEMENT may be amended at any time only by written mutual agreement of the parties hereto.

18. Termination of MASTER AGREEMENT and Project Agreements. This MASTER AGREEMENT shall be valid until terminated without cause by either party by giving the other party written notice, specifying the effective date of the termination, at least 60 days prior to the effective date of the termination. Concurrent with the termination of the MASTER AGREEMENT, all project agreements entered under this MASTER AGREEMENT shall also terminate.

Each and every project agreement for all projects covered by this MASTER AGREEMENT shall include a termination date for the project agreement, in accordance with Act 97, 1994 Hawaii Session Laws.

19. Notices. All notices and amendments to this MASTER AGREEMENT shall be in writing and sent by mail, by hand delivery, or by facsimile telecopier, with a copy to be sent by mail, addressed as follows:

TO STATE at: Department of Budget and Finance  
No.1 Capitol District, Room 301  
250 South Hotel Street  
Honolulu, Hawaii 96813  
Attention: Director of Finance  
Telephone: 586-1518                      Telecopier: 586-1976

With copy to: Applicable Executive Branch department or agency  
Attention: Responsible employee designated under  
4.c. above

TO RCUH at: The Research Corporation of the University of Hawaii  
2800 Woodlawn Drive, Suite 200  
Honolulu, Hawaii 96822-1863  
Attention: Mr. Harold Masumoto, Executive Director  
Telephone: 988-8311                      Telecopier: 988-8319

With copy to: Department of the Attorney General  
425 Queen Street  
Honolulu, Hawaii 96813  
Attention: Administration Division  
Telephone: 586-1255                      Telecopier: 586-1372

Any such address, contact person, telephone number, or telecopier number may be changed from time to time by serving notice to all other parties as above provided. Service of such notice shall be deemed complete on the day of actual delivery or at the expiration of the second day after the date of mailing, whichever is earlier, or by hand or facsimile copier.



IN WITNESS WHEREOF, the parties hereto have executed this MASTER AGREEMENT on the day and year first above written.

STATE OF HAWAII

By Earl J. Cayson  
Its Governor or designee

"STATE"

THE RESEARCH CORPORATION OF  
THE UNIVERSITY OF HAWAII

By Gary W. Redinger  
Its Chairperson, Board of Directors

"RCUH"

APPROVED AS TO FORM AND CONTENT:

Harriet G. Lewis  
Deputy Attorney General, State of Hawaii

Date: April 17, 1995

FIRST AMENDMENT TO  
MASTER AGREEMENT BETWEEN THE STATE OF HAWAII  
AND  
THE RESEARCH CORPORATION OF THE UNIVERSITY OF HAWAII

This FIRST AMENDMENT TO MASTER AGREEMENT made on the \_\_\_\_\_ of June, 1999, and effective June 30, 1999, is entered into by and between the STATE OF HAWAII (hereinafter referred to as the "STATE"), on behalf of all Executive Branch departments and agencies except the University of Hawaii, and THE RESEARCH CORPORATION OF THE UNIVERSITY OF HAWAII (hereinafter referred to as "RCUH").

W I T N E S S E T H

WHEREAS, STATE and RCUH entered into that certain MASTER AGREEMENT BETWEEN THE STATE OF HAWAII AND THE RESEARCH CORPORATION OF THE UNIVERSITY OF HAWAII dated April 17, 1995 (hereinafter "Master Agreement), to further their mutual interests in promoting education, research, and investigation in Hawaii, and maximizing the amount of federal and other non-state funding available to the State of Hawaii to pursue these mutually held objectives;

WHEREAS, STATE and RCUH entered into the Master Agreement to implement the provisions of Act 97, 1994 Session Laws of Hawaii, and provide uniform terms and conditions for departments and agencies of the Executive Branch of the State of Hawaii to secure the assistance of RCUH in managing and administering their research projects; more particularly, to specify the circumstances under which the RCUH would be available to assist Executive Branch departments and agencies of the State of Hawaii with the administration and management of individual research projects that a department or agency may undertake; and to provide a single uniform description of the services that RCUH is able to provide, and the procedures that need to be followed to secure those services from RCUH for individual research projects;

WHEREAS, Section 17 of the Master Agreement permits the agreement to be amended by written mutual agreement of STATE and RCUH;

WHEREAS, STATE and RCUH mutually agree that the Master Agreement should be amended to clarify the parties' respective responsibilities with respect to satisfying the requirements of applicable law, and the terms and conditions imposed upon the various research projects that STATE retains RCUH to manage and administer under this Master Agreement and individual project agreements;

NOW, THEREFORE, in consideration of the mutual agreements set forth in the Master Agreement, and this first amendment to the Master Agreement, STATE and RCUH agree to amend the Master Agreement by amending subsections b., e., f., and g. of Section 4, Responsibilities of the STATE, to read as follows:

- b. Obtain the Department of the Attorney General's review as to whether the provision of administrative services by RCUH for a particular project is appropriate under Chapter 307, Hawaii Revised Statutes, and any other applicable law and, also, approval as to the form and content of the specific requirements described in the project agreement, including amendments and continuations thereof.
- e. Fulfill all the terms and conditions imposed upon STATE in a project award, contract, or grant document.
- f. Supervise the project with responsibility for completion of the scope, workplan and schedule of the project, as described in a project award, contract, or grant document.
- g. STATE shall be ultimately responsible and accountable for the management and conduct of all projects covered by this MASTER AGREEMENT, including but not limited to compliance with all applicable state and federal laws, and state and federal program requirements in the management and conduct of each project.

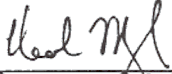
Since STATE is ultimately responsible and accountable for complying with all applicable laws and program requirements in managing and conducting a project, and for fulfilling all the terms and conditions imposed by any award, contract, or grant for a project, STATE retains all responsibility for paying all liabilities, penalties, interest, and expenses imposed for failure to satisfy applicable law, a program requirement, or term or condition of an award, contract, or grant, in the management and conduct of the project; provided, however, that STATE shall not be responsible for payment of liabilities, penalties, interest and other expenses incurred by RCUH if the Attorney General determines that a RCUH officer's or employee's action or omission to act (a) was material to the accrual of liability and (b) constitutes gross negligence, willful misconduct, or violation of the criminal law.

In rendering administrative services pursuant to this AGREEMENT, RCUH will be acting as an agent of STATE, and not as principal; provided, however, that in the event, pursuant to authorization by law, a project is transferred to RCUH by an Executive Branch department or agency for direct management thereof by RCUH, RCUH shall act as principal, not as an agent, and RCUH shall be responsible and accountable for the management and conduct of such transferred project, including but not limited to the payment of liabilities, penalties, interest, and expenses that may be incurred by STATE for such project.

IT IS FURTHER AGREED, that unless amended herein, the Master Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, STATE and RCUH execute this First Amendment to the Master Agreement by their signatures, on the dates below.

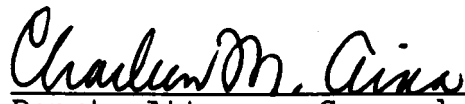
STATE OF HAWAII

By   
Its Director of Finance  
Date: 7/14/99

THE RESEARCH CORPORATION OF  
THE UNIVERSITY OF HAWAII

By   
Its Executive Director  
Date: June 30, 1999

APPROVED AS TO FORM AND CONTENT

  
Deputy Attorney General  
State of Hawaii