

## **REQUEST FOR PROPOSALS**

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

**Hawaii Utelehealth Project Provider**

**for the**

**Hawaii Utelehealth Project  
John A. Burns School of Medicine, Area Health Education Center  
University of Hawaii  
Honolulu, HI**

**January 27, 2023**

# NOTICE TO OFFERORS

## RFP Availability

A copy of the Request for Proposal (RFP) for the Hawaii UTelehealth Project Provider is available on the University of Hawaii, John A. Burns School of Medicine, Area Health Education Center website: <https://www.ahec.hawaii.edu>.

## Questions About the RFP

All questions about the RFP must be directed to Claudine Chan-Naruse at [ccnaruse@hawaii.edu](mailto:ccnaruse@hawaii.edu). Closing Date for Receipt of Offeror Questions is 5:00 PM (Hawaii Standard Time), February 3, 2023.

## Closing Date for Receipt of Proposals

Completed proposals must be received no later than 5:00 PM (Hawaii Standard Time), February 17, 2023, 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

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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 39 pages.

## 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 University of Hawaii, John A. Burns School of Medicine, Hawaii/Pacific Basin Area Health Education Center, 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): ..... January 27, 2023  
Closing Date for Receipt of Offeror's Attachment A  
(Notice of Intent to Submit a Proposal): ..... Not Applicable  
Closing Date for Receipt of Offeror Questions:..... February 3, 2023  
Closing Date for Posting Responses to Questions: ..... February 8, 2023  
Closing Date for Receipt of Proposals: ..... February 17, 2023  
Proposal Review Period: ..... February 21 – March 3, 2023  
Period of Contractor Selection and Award: ..... March 6-31, 2023  
Services Start Date (Tentative): ..... April 3, 2023

### 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 Area Health Education Center website: <https://www.ahec.hawaii.edu>. **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 Claudine Chan-Naruse using the address, [ccnaruse@hawaii.edu](mailto:ccnaruse@hawaii.edu). RCUH reserves the right to only respond to questions regarding proposal requirements, contents, and details, that are received by 5:00 PM, HST February 3, 2023. All received questions and responses will be posted by 5:00 PM, February 8, 2023 on the Area Health Education Center website: <https://www.ahec.hawaii.edu>.

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 1 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:

Hawaii/Pacific Basin AHEC  
(Attn: Claudine Chan-Naruse)  
John A. Burns School of Medicine  
651 Ilalo St. , MEB 224  
Honolulu, HI 96813

Address, if submitting by email:  
ccnaruse@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 5pm P.M. Hawaii Standard Time, on February 20, 2023, 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 <https://www.sam.gov/SAM/> to determine whether an entity has an active exclusion.

## **1.16 REFERENCES**

The Offeror must disclose all contracts for similar services for the last 3 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 3 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 Offerors will be selected.

## **1.19 PROCESS FOR NEGOTIATIONS**

The RCUH will attempt to negotiate with each 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 particular Offeror(s) , and may select other Offerors for negotiation of a potential award. This process may continue 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 AND PERIOD OF PERFORMANCE**

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.

The period of performance of each Agreement for Services may vary between six (6) months to one (1) year, with the option to renew, based on availability of funding and subject to Offeror's satisfactory performance of deliverables, as specified in Section 2 – Statement of Work.

## **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



University of Hawaii, John A. Burns School of Medicine, Hawaii/Pacific Basin Area Health Education Center. The Delegated Procurement Officer responsible for overseeing the RFP process and Agreement for Services is Dr. Kelley Withy, Principal Investigator and Program Lead for the Hawaii UTelehealth Project.

## **SECTION 2 – STATEMENT OF WORK**

Offeror shall provide telehealth services to patients in Hawaii to the level of service of their provider license. The Hawaii UTelehealth Project coordinators will refer patients to Offeror, who - depending on the nature of a patient's condition and other providers' availability for consultations - shall also be available for tele-consultations between providers, as needed. If a patient needs in-person care after the telehealth visit, Offeror shall refer patient to an in-person Primary Care Physician, or, if needed, to the nearest Emergency Department.

Offeror shall deliver telehealth services via a HIPAA-compliant, online telehealth portal system (TPS), and patients will be scheduled based on Offeror's availability.

Offeror will also be required to execute a Business Associate Agreement (refer to Attachment F, Business Associate Agreement between the University of Hawaii and the Offeror).

### Required Deliverables:

Required monthly report, which includes:

1. Hours of contact with patient by zip code and patient code for billing purposes.
2. Grant specific data requirements including Substance Use Disorder screening performed.
3. Feedback on ideas for improvement to HawaiiUTelehealth program.

In addition, all Hawaii Utelehealth patients will be asked to complete regular outcome assessment measures. Ideally, outcome measures will be patient-centered, age-appropriate, diagnosis-specific, and culturally responsive. Assistance from providers may be needed to collect evaluation data.

## **SECTION 3 – PROPOSAL REQUIREMENTS**

### **3.1 REQUIRED FORMAT**

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

1. Technical Proposal
2. Qualifications and Expertise

#### **3.1.1 Reserved**

#### **3.1.2 TECHNICAL PROPOSAL**

1. Describe hours available to care for patients.
2. Describe HIPAA-compliant telehealth platform utilized and methods for documenting patient progress (electronic health record, if applicable).
3. Provide BAA for HIPAA-compliant telehealth platform and electronic health record system (if appropriate).
4. Provide cyber security insurance certificate, and privacy and security policies, of HIPAA-compliant telehealth platform vendor and electronic health record system (if appropriate).

#### **3.1.3 SCHEDULE**

Individual providers will provide services to patients via telehealth using a HIPAA-compliant telehealth platform as they are scheduled by the Hawaii Utelehealth Project coordinators.

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

Offeror shall describe the provider(s) qualifications, and experience. Resumes or curriculum vitae of provider applicants shall be included in the proposal (to be included with Appendix B, described below).

Each applicant will provide the following documents with their proposal and update them before expiration:

- Curriculum Vitae
- Copy of active professional license (needs to be a State of HI license)
- NPI number
- DEA license (if applicable)
- HI controlled substances permit (if applicable)
- Hawaii Driver's License or identification card (ie. Passport)
- Certificate of Malpractice insurance\*
- Three references

- Signed attestation form

Applicants who are individual/sole proprietor/single-member LLC, will also submit their:

- HI GET license
- Business card (for private practice)
- Website (for private practice)

\*Each applicant will maintain malpractice liability insurance for \$1,000,000 for each claim/\$3,000,000 aggregate throughout the term of service of the contract.

**(Note: RCUH also requires each Offeror to review Attachment E for additional insurance requirements and include applicable insurance documents in their proposal.**

### 3.1.5 COMPENSATION AND PAYMENT

Provider type	Payment per hour
Psychiatry (Adult & Child)	\$150/hr
Other physician specialties: MD (Doctor of Medicine), DO (Doctor of Osteopathic Medicine)	\$125 /hr
Advanced practice registered nurses (APRN) and psychiatric mental health nurse practitioners (PMHNP)  Physician Assistant (PA)  Psychologists: PsyD (Doctor of Psychology) or PhD (Doctor of Philosophy)  Licensed Marriage and Family Therapist (LMFT)  LCSW (Licensed Clinical Social Worker),  Licensed Mental Health Counselors (LMHC)	\$100/hr
CSAC (Certified Substance Abuse Counselor)	\$75/hr

### 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 three (3) 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 the University of Hawaii, John A. Burns School of Medicine, Hawaii/Pacific Basin Area Health Education Center.

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 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 **5 PM Hawaii Standard Time, February 17, 2023,** 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 any Contractors. The offeror(s) with the highest score(s) according to the criteria shown in this section shall be awarded contract(s).

### **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 insurance requirements. 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	30
Qualifications and expertise	30
References	20
Insurance Requirements	20

Total maximum points allowed: 100

The “References” category will be scored by selecting up to 3 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 highest ranked, qualified Offerors. If this cannot be accomplished within 21 calendar days after initial Selection, the RCUH reserves the right to terminate contract negotiations with the particular Offeror(s), and may select the next ranked Offerors 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.

The number of openings per provider type is as follows:

Provider type	Number of openings
Child or Adult Psychiatry (MD/DO)	5
MD (Doctor of Medicine)	5
DO (Doctor of Osteopathic Medicine)	5
Physician Assistant (PA)	5
Advanced Practice Registered Nurse (APRN) and Psychiatric Mental Health Nurse Practitioner (PMHNP)	5
PsyD (Doctor of Psychology) or PhD (Doctor of Philosophy)*	5
LMFT (Licensed Marriage and Family Therapist)*	5
LCSW (Social Worker)*	5
LMHC (Licensed Mental Health Counselor)*	5
CSAC (Certified Substance Abuse Counselor)*	5

\*25 total psychotherapists from any combination of these credential categories

#### **4.5 ORAL PRESENTATIONS**

Not applicable.

#### **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, Attachment E – Insurance Requirements and Attachment F – Business Associate Agreement. Necessary forms will be provided to the selected company.

**Attachment A. Reserved**

## **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, RCUH shall have the right to terminate this Agreement in whole or in part, by giving written notice to CONTRACTOR at least seven (7)

calendar days (or any longer time as specified by RCUH in writing) before the effective date of termination. The notice shall provide CONTRACTOR with an opportunity to cure its default or take satisfactory corrective action within the seven (7) days (or other longer time as specified by RCUH). 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 of the Agreement of Services.
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 or the University of Hawaii to be necessary, CONTRACTOR, the University of Hawaii, 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 of the Agreement for Services.
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, Jurisdiction and Venue. 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. References to “Employee”, below, includes all State of Hawai‘i employees, including 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 or RCUH employee. (2 C.F.R. § 200.459 Professional service costs).
3. CONTRACTOR has not been, and will not be, 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, and will not be, assisted or represented by an employee of RCUH or UH for a fee or other compensation.
6. CONTRACTOR has not been, and will not be, 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 Employee, and participated while a legislator or Employee on matters related to this Agreement. (HRS §§ 84-18(b) and (c)).
7. CONTRACTOR has not been, and will not be, represented by a former employee of RCUH or UH for a fee or other compensation, where that former employee served as an employee of RCUH or UH within the past twelve (12) months.

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.

CONTRACTOR

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By

Its

(Title)

Date

\* Reminder to the Project. If the "(is)" in No. 1 and/or 2 above is selected: (a) contact RCUH Procurement prior to executing this Agreement; and (b) if this Agreement involves goods or services of a value in excess of \$10,000, this Agreement must have been 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. Insurance Requirements**

**(Note: It is the responsibility of the Offeror to carefully review the Insurance Requirements set forth below. Questions or concerns about any of the requirements shall be promptly submitted to the RCUH prior to the Closing Date for Receipt of Offeror Questions.)**

CONTRACTOR shall maintain General Liability insurance acceptable to RCUH in full force and effect throughout the term of this Agreement. The policy or policies of insurance maintained by the CONTRACTOR shall provide Combined Single Limit Coverage (bodily injury and property damage) in the amount of \$1,000,000 per occurrence and \$2,000,000 per project aggregate. Insurance shall be in force the first day of the term of this Agreement.

Workers' Compensation/Employers' Liability Insurance – CONTRACTOR shall maintain workers' compensation insurance for all persons whom they employ in carrying out the work under this Agreement, in amounts sufficient to meet the Hawaii statutory limits and/or the legal requirements in all other jurisdictions where work will be performed. CONTRACTOR shall maintain the following minimums for Employers' Liability: (1) Bodily Injury by Accident, \$1,000,000 (each accident); (2) Bodily Injury by Disease, \$1,000,000 (policy limit); and (3) Bodily Injury by Disease, \$1,000,000 (each employee).

CONTRACTOR shall maintain Professional Liability (errors and omissions) insurance with a limit of not less than One Million Dollars (\$1,000,000.00) per claim, and Three Million Dollars (\$3,000,000.00) in the aggregate, during the term of this Agreement.

Each insurance policy and COI required by this Agreement shall:

- a. Provide that any insurance maintained by RCUH will apply in excess of, and not contribute with, insurance provided by the Contractor's policy.
- b. Name RCUH, the State of Hawaii, and the University of Hawaii as additional insureds with respect to operations performed for the University of Hawaii and RCUH.
- c. Waive all rights of subrogation in favor of RCUH, the State of Hawaii, and the University of Hawaii.

Clauses a and b are waived for any professional liability (errors and omissions) insurance.

**If CONTRACTOR will be using their own HIPAA compliant, online Telehealth Portal System (TPS),** then CONTRACTOR shall ensure that the TPS provider maintains cyber-security insurance, during the term of this Agreement, with coverage acceptable to RCUH, that includes but is not limited to coverage for first-party costs and third-party claims from: (i) failure to protect data, including unauthorized disclosure, use or access, (ii) security failure or privacy breach, (iii) failure to disclose such breaches as required by law, regulation or contract, (iv) notifications, public relations, credit monitoring, postage, advertising, and other services to assist in managing and mitigating a cyber-incident, (v) interruptions of business operations, (vi) network security failure, (vii) cyber-extortion, (viii) cyber-terrorism, (ix) communications and media liability (e.g., infringement of copyright, title, slogan, trademark, trade name, trade dress, service mark or service name in the policyholder's covered material), (x) EFT, computer, and electronic transmissions fraud and theft, and (xi) other cyber-liability and cyber-crime expenses.

CONTRACTOR is required to notify RCUH of any changes to CONTRACTOR's insurance policies or any cancellation of insurance at least THIRTY (30) days prior to the change or cancellation. All insurance described herein shall be primary and cover the insured for all work to be performed under this Agreement, all work performed incidental thereto or directly or indirectly connected therewith.

CONTRACTOR agrees to deposit with RCUH, on or before the effective date of this Agreement, certificates of insurance necessary to satisfy RCUH that the insurance provisions of this Agreement have been complied with and to keep such insurance in effect and the certificates therefore on deposit with RCUH during the entire term of this Agreement.

RCUH shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of RCUH, the insurance provisions in this Agreement do not provide adequate protection for RCUH, RCUH may require CONTRACTOR to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. RCUH's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of the risks which exist at the time a change in insurance is required.

RCUH shall notify CONTRACTOR in writing of changes in the insurance requirements; and if CONTRACTOR does not deposit copies of acceptable insurance policies with RCUH incorporating such changes within TEN (10) days of receipt of such notice, this Agreement shall be in default without further notice to CONTRACTOR and RCUH shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit CONTRACTOR liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement. Notwithstanding said policy or policies of insurance, CONTRACTOR shall be obligated for the full and total amount of any damage, injury, or loss arising from its acts or omissions with respect to this Agreement.

## **Attachment F Business Associate Agreement**

This Business Associate Agreement (“Agreement”), effective as of \_\_\_\_\_, 2023, is entered into by and between \_\_\_\_\_, whose business address is \_\_\_\_\_ (hereinafter referred to as the “Covered Entity”) and the University of Hawai‘i, the state university and a body corporate of the State of Hawai‘i, whose business address is 2444 Dole Street, Bachman Hall, Honolulu, Hawai‘i 96822, for the benefit of its John A. Burns School of Medicine, whose business address is 651 Ilalo Street, Honolulu, Hawai‘i 96813 (hereinafter referred to as the “Business Associate”) (individually, a “Party” and collectively, the “Parties”).

### **WITNESSETH:**

WHEREAS, it is the mutual intent of Covered Entity and Business Associate to comply with the applicable provisions of the Health Insurance Portability and Accountability Act Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E (the “Privacy Rule”); and

WHEREAS, it is the mutual intent of Covered Entity and Business Associate to comply with the applicable provisions of the Health Insurance Portability and Accountability Act Standards for Security of Electronic Protected Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and C (the “Security Rule”) as well as the applicable provisions of the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”) (the Privacy Rule, Security Rule, and HITECH Act are hereinafter collectively referred to as the “HIPAA Rules”); and

WHEREAS, Business Associate may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under such arrangement;

THEREFORE, in consideration of the Parties’ continuing obligations involved in the provision of services pursuant to agreement(s) between Covered Entity and Business Associate or between Covered Entity and the Research Corporation of the University of Hawai‘i (“RCUH”) for the benefit of Covered Entity (“Services Agreement(s)”) from time to time, compliance with the applicable HIPAA Rules, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Rules and to protect the interests of both Parties.

### **I. DEFINITIONS**

(a) Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in the HIPAA Rules. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Rules, as amended, the HIPAA Rules shall control. Where provisions of this Agreement are different from those presented in the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this Agreement shall control.

(b) The term “Protected Health Information” means individually identifiable



health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and is received from, or created or received by Business Associate on behalf of Covered Entity. "Protected Health Information" includes without limitation "Electronic Protected Health Information" as defined below.

(c) The term "Electronic Protected Health Information" means Protected Health Information which is transmitted by Electronic Media (as defined in the HIPAA Rules) or maintained in Electronic Media.

(d) The term "Breach" means the acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted under the Privacy Rule which compromises the security or privacy of the Protected Health Information as described in the HITECH Act.

(e) Business Associate acknowledges and agrees that all Protected Health Information that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement.

## II. OBLIGATIONS OF BUSINESS ASSOCIATE AND PERMITTED USES AND DISCLOSURES

(a) Business Associate agrees not to use or disclose Protected Health Information other than as permitted or required by this Agreement or as required by law.

(b) Business Associate may only use or disclose Protected Health Information to:  
(1) meet Business Associate's obligations set forth in the Services Agreement(s) and this Agreement, or (2) as required by law.

(c) Business Associate agrees to make uses and disclosures and requests for Protected Health Information consistent with Covered Entity's minimum necessary policy, to the extent applicable.

(d) Business Associate agrees to ensure that any subcontractors that any create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information.

(e) Except as otherwise set forth in this Agreement, including without limitation Sections II.(f) and II.(g), Business Associate may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done

by Covered Entity.

(f) Notwithstanding any limitations set forth in this Agreement, Business Associate may use and/or disclose Protected Health Information as follows:

(i) for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that as to any disclosure, the following requirements are met:

(A) the disclosure is required by law; or

(B) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

(g) Business Associate may provide data aggregation services relating to the Health Care Operations of the Covered Entity.

(h) Business Associate will implement and use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic Protected Health Information, to prevent use or disclosure of Protected Health Information other than as permitted in this Agreement. Business Associate will implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the HIPAA Rules.

(i) Business Associate shall make its internal practices, books, and records related to use and disclosure of Protected Health Information available to the Secretary of Health and Human Services for purposes of determining the Covered Entity's compliance with the terms of the HIPAA Rules.

(j) Business Associate shall report to Covered Entity any use or disclosure of Protected Health Information which is not in compliance with the terms of this Agreement of which it becomes aware, including Breaches of unsecured Protected Health Information as required at 45 C.F.R. §164.10, and any security incident of which it becomes aware.

#### IV. ACCESS AND AVAILABILITY OF PROTECTED HEALTH INFORMATION

(a) Upon receipt of a request by Covered Entity for access to Protected Health Information about an individual contained in a Designated Record Set, Business Associate shall make such Protected Health Information available to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §164.524. In the event any individual requests access to Protected Health Information directly from Business Associate, Business Associate shall forward such request to Covered Entity.

(b) Upon receipt of a request from Covered Entity for the amendment of an individual's Protected Health Information or a record regarding an individual contained in a Designated Record Set, Business Associate shall provide such information to Covered Entity for amendment and/or incorporate any such amendments in the Protected Health Information as directed or agreed by the Covered Entity pursuant to 45 C.F.R. §164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §164.526.

(c) Business Associate shall maintain and make available to Covered Entity such information as is in Business Associate's possession and is required for Covered Entity to provide an accounting of disclosures as necessary to satisfy Covered Entity's obligation under 45 C.F.R. §164.528. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall forward such request to Covered Entity.

(d) To the extent that Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, Business Associate agrees to comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).

## V. OBLIGATIONS OF COVERED ENTITY

(a) Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 45 C.F.R. 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

(b) Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

(c) Covered Entity shall notify Business Associate of any restriction on the use or disclosure of Protected Health Information or other health information that Covered Entity has agreed to or is required to abide by under 45 C.F.R. 164.522 or 42 C.F.R. Part 2, to the extent that such restriction may affect or limit Business Associate's use or disclosure of Protected Health Information.

(d) Covered Entity is solely responsible for ensuring the Protected Health Information it transmits via Business Associate may be legally disclosed to the recipient(s) of the Protected Health Information.

## VI. TERM AND TERMINATION

(a) This Agreement shall be effective as of the date first above and shall continue in effect unless terminated earlier as provided herein.

(b) If either Party becomes aware of a pattern of activity or practice of the other Party that constitutes a breach or violation of a material term of such Party's obligations under this Agreement, the non-breaching Party shall give the breaching Party notice of the breach or violation of the material term and the breaching Party shall have thirty (30) days to cure such breach or violation. If the breach is not cured within such time frame, the non-breaching Party may immediately terminate this Agreement.

(c) Upon termination of this Agreement, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of covered entity, shall:

- (i) Retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
- (ii) Return to covered entity or, if agreed to by Covered Entity, destroy the remaining Protected Health Information that the Business Associate still maintains in any form;
- (iii) Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this Section VI, for as long as Business Associate retains the Protected Health Information;
- (iv) Not use or disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions of use and disclosure required under this Agreement that applied prior to termination; and
- (v) Return to Covered Entity or, if agreed to by Covered Entity, destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

(d) Obligations of the Parties under this Section VI shall survive termination of this Agreement.

## VII. MISCELLANEOUS

(a) Except as expressly stated herein or in the HIPAA Rules, the parties to this Agreement do not intend to create any rights in any third parties.

(b) This Agreement may be amended or modified only in a writing signed by the parties.

(c) No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

(d) None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement, the Services Agreements, and any other agreements between the Parties evidencing their business relationship.

(e) This Agreement shall be governed by and construed, interpreted, and enforced in accordance with the laws of the State of Hawai‘i, and the courts of the Circuit Court of the First Circuit of the State of Hawai‘i shall have exclusive jurisdiction in any action to interpret or enforce this Agreement. The provisions of this paragraph shall survive expiration or other termination of this Agreement regardless of the cause of the termination.

(f) No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

(g) In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event a Party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Rules including the HITECH Act, such Party shall notify the other Party in writing. For a period of up to thirty days, the parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty-day period, the Agreement fails to comply with the HIPAA Rules, then either Party has the right to terminate this Agreement upon written notice to the other Party.

#### VIII. NOTICE

Except as otherwise specifically provided herein, all notices, demands, requests, and other communications given under this Agreement shall be in writing and shall be (a) delivered in person, (b) mailed by first class mail, certified or registered, return receipt requested, postage prepaid, or sent by commercial courier, at the sender’s expense, (c) transmitted by fax transmission, or (d) transmitted by electronic mail, to the addresses below:

If to Covered Entity: *[Covered Entity to insert contact information]*

If to University: University of Hawai‘i  
Information Technology Center  
2520 Correa Road  
Honolulu, Hawai‘i 96822  
Email: [hipaa@hawaii.edu](mailto:hipaa@hawaii.edu)  
Attention: HIPAA Compliance Officer

With a copy to: Hawaii/Pacific Basin Area Health Education Center  
John A. Burns School of Medicine  
651 Ilalo Street, 224M  
Honolulu, Hawai‘i 96813  
Email: [wthy@hawaii.edu](mailto:wthy@hawaii.edu)

Notices, demands, requests, and other communications shall be deemed served or given for all purposes hereunder at the time such notice, demand, request, or communication is delivered in person or delivered by commercial courier, the sender of the fax transmission has received confirmation of its transmission from the sender's fax machine, or three days following such mailing thereof, as the case may be. Notices, requests, demands, and other communications hereunder may be transmitted by electronic mail or similar electronic transmission but will not be considered official notice unless the sending party receives confirmation that the receiving party has received the email.

IN WITNESS WHEREOF, this Agreement has been executed by the authorized representative(s) of the Covered Entity and the authorized representative(s) of the Business Associate.

UNIVERSITY OF HAWAII  
Business Associate:

By: \_\_\_\_\_  
Michael Bruno  
Provost  
University of Hawai'i at Manoa  
Date

By: \_\_\_\_\_  
Garret T. Yoshimi, VP and CIO for  
HIPAA Compliance Officer  
Date

By: \_\_\_\_\_  
Kelley Withy, MD, PhD, Director  
Project Principal Investigator / Program Lead  
Date

[NAME OF COVERED ENTITY]  
Covered Entity:

By: \_\_\_\_\_  
Authorized Official  
Title  
Date

## Attachment G. Offeror Attestation

### HAWAII UTELEHEALTH PRACTITIONER ATTESTATION QUESTIONS

Please answer all of the following questions. If your answer to any of the following questions is "Yes", provide details as specified on a separate sheet. **If you attach additional sheets, sign and date each sheet.**

#### A. PROFESSIONAL SANCTIONS

1.	Have you ever been, or are you now in the process of being denied, revoked, terminated, suspended, restricted, reduced, limited, sanctioned, placed on probation, monitored, or not renewed for any of the following? Or have you voluntarily or involuntarily relinquished, withdrawn, or failed to proceed with an application for any of the following in order to avoid an adverse action or to preclude an investigation or while under investigation relating to professional competence or conduct?		
		YES	NO
	a. License to practice any profession in any jurisdiction		
	b. Other professional registration or certification in any jurisdiction		
	c. Specialty or subspecialty board certification		
	d. Membership on any hospital medical staff		
	e. Clinical privileges at any facility, including hospitals, ambulatory surgical centers, skilled nursing facilities, etc.		
	f. Medicare, Medicaid, FDA, NIH (Office of Human Research Protection), governmental, national or international regulatory agency or any public program		
	g. Professional society membership or fellowship		
	h. Participation/membership in an HMO, PPO, IPA, PHO, Health Plan or other entity		
	i. Academic Appointment		
	j. Authority to prescribe controlled substances (DEA or other authority)		
2.	Have you ever been subject to review, challenges, and/or disciplinary action, formal or informal, by an ethics committee, licensing board, medical disciplinary board, professional association or education/training institution?		
3.	Have you been found by a state professional disciplinary board to have committed unprofessional conduct as defined in applicable state provisions?		
4.	Have you ever been the subject of any reports to a state, federal, national data bank, or state licensing or disciplinary entity?		

#### 8. CRIMINAL HISTORY

1.	Have you ever been charged with a criminal violation (felony or misdemeanor) resulting in either a plea bargain, conviction on the original or lesser charge, or payment of a fine, suspended sentence, community service or other obligation?		
	a. Do you have notice of any such anticipated charges?		
	b. Are you currently under Government investigation?		

#### C. AFFIRMATION OF ABILITIES

1.	Do you presently use any drugs illegally?		
2.	Do you have, or have you had in the last five years, any physical condition, mental health condition, or chemical dependency condition (alcohol or other substance) that affects or will affect your current ability to practice with or without reasonable accommodation? If reasonable accommodation is required, specify the accommodations required. If the answer to this question is yes, please identify and describe any rehabilitation program in which you are or were enrolled which assures your ability to adhere to prevailing standards of professional performance.		
3.	Are you unable to perform any of the services/clinical privileges required by the applicable participating practitioner agreement/hospital agreement, with or without reasonable accommodation, according to accepted standards of professional performance?		

#### D. LITIGATION AND MALPRACTICE COVERAGE HISTORY (If you answer "Yes" to any of the questions in this section, please provide the details on a separate sheet and submit with your proposal.

1.	Have allegations or claims of professional negligence been made against you at any time, whether or not you were individually named in the claim or lawsuit?		
2.	Have you or your insurance carrier(s) ever paid any money on your behalf to settle/resolve a professional malpractice claim (not necessarily a lawsuit) and/or to satisfy a judgment (court-ordered damage award) in a professional lawsuit?		
3.	Are there any such claims being asserted against you now?		
4.	Have you ever been denied professional liability coverage, or has your coverage ever been terminated, not renewed, restricted, or modified (e.g. reduced limits, restricted coverage, surcharged)?		
5.	Are any of the privileges that you are requesting not covered by your current malpractice coverage?		

I warrant that all the statements made on this form and any attached information sheets are complete, accurate, and current. I understand that any material misstatements in, or omissions from, this statement constitute cause for denial of membership or cause for summary dismissal from the entity to which this statement has been submitted.

Name: \_\_\_\_\_ Date: \_\_\_\_\_