

REQUEST FOR PROPOSALS
NO. 12-001

SEALED OFFERS FOR
INSURANCE BROKER SERVICES

Issued by
State of Hawaii
Department of Budget and Finance
Hawaii Employer-Union Health Benefits Trust Fund (EUTF)
Will be received up to 4:00 p.m. (HST) on
August 31, 2012
In the EUTF, City Financial Tower
201 Merchant Street, Suite 1520
Honolulu, Hawaii 96813

August 3, 2012

Barbara Coriell
Procurement Officer

Hawaii Employer Union Health Benefits Trust Fund

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NOTICE TO OFFERORS

The Hawaii Employer-Union Health Benefits Trust Fund ("EUTF") seeks proposals from qualified offerors to provide insurance broker services.

Sealed proposals for this project, RFP No. 12-001, will be received at:

Hawaii Employer-Union Health Benefits Trust Fund
City Financial Tower
201 Merchant Street, Suite 1520
Honolulu, Hawaii 96813

Proposals will be accepted up to 4:00 p.m., Hawaii Standard Time ("HST"), August 31, 2012. Proposals received after this time will NOT be accepted. The Request for Proposals ("RFP") may be examined at or obtained from the office listed above, as well as online at www.spo.hawaii.gov in Acrobat Reader format and at www.eutf.hawaii.gov in native file formats, Microsoft Word and Acrobat Reader, as applicable.

Legal Ad Date – August 3, 2012

SECTION ONE

ADMINISTRATIVE OVERVIEW

1.01 INTRODUCTION

This request for proposals ("RFP") is issued by the Hawaii Employer-Union Health Benefits Trust Fund ("EUTF"). The purpose of this RFP is to select a qualified insurance broker to service the EUTF and to obtain the following insurance coverage for the EUTF Board of Trustees: (1) public officials liability insurance, fiduciary liability insurance, fidelity bond coverage, and cyber risk liability, and/or (2) other insurance that may be requested by the EUTF Board of Trustees. The EUTF currently has the following policies in force:

- Commercial Crime
- Fiduciary Liability
- Public Entity/Employment Practices Liability

The EUTF is governed by Chapter 87A, Hawaii Revised Statutes ("HRS"). Under Chapter 87A, the EUTF is authorized to design, provide, and administer health and other benefit plans for State and county employees, retirees, and their dependents. Since July 1, 2003, the EUTF has been providing health and other benefit plans to all State and county employees, retirees, and their dependents. The benefit plans include medical, prescription drug, vision, dental, chiropractic, and life insurance. The EUTF's plan year for active employees is July 1 through June 30 (fiscal year) and for retirees it is January 1st through December 31st (calendar year). As a governmental plan, the EUTF is exempt from ERISA. See 29 U.S.C. § 1003 (b)(1).

The EUTF is administered by a board of ten trustees ("Board") who are appointed by the Governor. Five trustees represent the employee-beneficiaries, one of whom represents retirees. These five trustees are selected by the Governor from a list of candidates provided by the exclusive employee representative organizations. The remaining five trustees, also appointed by the Governor, represent the public employers. The Board's responsibilities include determining the nature and scope of benefit plans, negotiating and entering into contracts with insurance carriers, establishing eligibility and management policies, and overseeing EUTF activities.

The EUTF is an agency of the State of Hawaii ("State"). It is attached to the State Department of Budget and Finance for administrative purposes and, therefore, should be considered an arm of the State and entitled to the same sovereign immunity as is available to the State. See HRS §§ 26-35(b) and 87A-30. The trustees of the Board should also be entitled to qualified immunity under HRS § 26-35.5.

HRS §§ 87A-25 (4) & (5) provide that the Board shall "procure fiduciary liability insurance and error and omissions coverage for all trustees" and "procure a fidelity bond of a reasonable amount for the chairperson and any other person authorized to handle fund moneys." The EUTF Administrator, Assistant Administrator, or the Financial Management Officer is authorized to handle fund moneys.

The EUTF's current insurance policies are attached in Appendix C. The State carries certain excess insurance that does or may provide some coverage for the EUTF.

The most recent audited financial statements of the EUTF are attached in Appendix D.

The most recent annual report of the EUTF is attached in Appendix A.

1.02 CONTRACT PERIOD

It is the EUTF's intention to utilize the selected broker for three years. At the EUTF's sole discretion, any contract resulting from this RFP may be extended beyond the first three years: (a) for an entire three years; or (b) for one year with the EUTF having the sole discretion to extend the contract for additional years up to three years total.

When interests of the State so require the State may terminate the contract for convenience by providing six (6) weeks prior written notice to the contracted party.

1.03 SIGNIFICANT DATES

The significant dates set forth below represent the EUTF's best estimate of the anticipated schedule of events. Offerors should use this timeframe for purposes of submitting their proposals. The EUTF reserves the right to change any date(s) as deemed necessary and in the best interest of the EUTF.

RFP Issued	August 3, 2012
Deadline for submission of written questions	August 13, 2012 2:00 p.m.
EUTF's response to written questions	August 20, 2012
Proposals	August 31, 2012 4:00 p.m. (HST)
Discussions with priority listed offerors (if necessary)	September 10, 2012
Best and final offers due (if any)	September 14, 2012
Contractor selection and award	September 25, 2012

1.04 AUTHORITY

This RFP is issued under the provisions of Chapter 87A, HRS and in accordance with Chapter 103D, HRS.

All prospective offerors are charged with presumptive knowledge of all requirements of the cited authorities. Chapter 87A, HRS, and the administrative rules of the EUTF are

available on the EUTF website at www.eutf.hawaii.gov . Chapter 103D, HRS, and the HAR regarding Chapter 103D, HRS, are available on the State of Hawaii website at www.spo.hawaii.gov .

1.05 ORGANIZATION OF PROPOSAL

This RFP is organized into five sections:

- | | | |
|-----------|---------------------------------|--|
| Section 1 | Administrative Overview | - Provides offerors with an overview of the procurement process and terms and conditions of this solicitation. |
| Section 2 | Proposal | - Describes the required format and content for the offerors' proposals. |
| Section 3 | Specifications and Requirements | - Provides offerors with specifications and general description of the tasks to be performed, delineates offeror responsibilities, and defines deliverables (as applicable). |
| Section 4 | Proposal Evaluation | - Describes the Evaluation Committee that will evaluate the proposals and the criteria that will be used by the Evaluation Committee. |
| Section 5 | Contract and General Conditions | - Provides offerors with a copy of the standard Contract form and general conditions that will be used for any contract resulting from this solicitation. |
| | Appendices | - Provides offerors with information and forms pertaining to their preparation of proposals. |

1.06 ISSUING OFFICE AND CONTACT PERSON

This proposal is issued by the EUTF. The issuing office ("Issuing Office") is:

Hawaii Employer-Union Health Benefits Trust Fund
201 Merchant Street, Suite 1520
Honolulu, Hawaii 96813

The Procurement Officer for this procurement is:

Barbara Coriell, Administrator
Hawaii Employer-Union Health Benefits Trust Fund
201 Merchant Street, Suite 1520
Honolulu, Hawaii 96813
Telephone: (808) 587-5434
Facsimile: (808) 586-2320

The Procurement Officer is the sole point of contact for this procurement.

1.07 WRITTEN QUESTIONS AND RESPONSES

If a potential offeror wants a formal answer to questions concerning this proposal, the potential offeror must submit such questions to the Procurement Officer by the time and date specified in Section 1.03, Significant Dates (page 5).

To facilitate a meaningful response, written questions must reference the page, paragraph, and line or sentence of the RFP to which the question relates. Questions may be submitted by email at eutfadmin@hawaii.gov provided they are received by the specified deadline. Such documents must contain pertinent information to identify the potential offeror, its telephone, email address, and FAX numbers, this RFP number, and be addressed to the Procurement Officer.

All official responses will be in writing and posted on the SPO website at www.spo.hawaii.gov and EUTF's website at www.eutf.hawaii.gov. The EUTF is not responsible for delays or non-receipt of such responses or any communications by the potential offerors.

1.08 SUBMISSIONS OF PROPOSALS

Each offeror shall submit only one (1) proposal. Alternate proposals will not be accepted. However, offerors may submit a proposal that includes alternative or supplemental types of proposed insurance coverage.

The original proposal must be single sided, unbound, and clearly marked, "Original." Fifteen copies (15) copies of the proposal must be submitted, each copy marked, "Copy _____ of 15." Copies may be bound and double-sided. A diskette or CD of the proposal is also required. Proposals must be received and time-stamped by the Issuing Office no later than the time and date specified in Section 1.03, Significant Dates (page 5). Any proposal received after that time and date will be rejected.

All proposals become the property of the EUTF.

FAXED OR EMAILED PROPOSALS WILL NOT BE ACCEPTED OR CONSIDERED FOR AWARD.

Proposals shall be mailed or hand delivered to the Issuing Office (see page 6 for address information).

The outside cover of the package containing the proposals shall be marked:

Proposal Submitted in Response to
No. 12-001
Hawaii Employer-Union Health Benefits Trust Fund

1.09 DISCUSSION AND PRESENTATIONS

Discussions may be conducted with priority listed offerors. Such offerors may be invited to make presentations to the Evaluation Committee to clarify proposals, to promote understanding of the EUTF's requirements and the offeror's proposal, and to facilitate

arriving at a contract that will provide the best value to the EUTF. Whether such discussions and presentations will be held will be at the discretion of the Evaluation Committee. Presentations, if any, will be held on the date(s) specified for discussions with priority listed offerors in Section 1.03, Significant Dates (page 5). Offerors shall bear all responsibility for any and all costs of the presentations. The Evaluation Committee may accept proposals without discussions and may award a contract without any presentations by the offerors. The Evaluation Committee may also reject proposals without discussions or presentations by the offerors.

1.10 BEST AND FINAL OFFERS

Best and final offers may be requested by the Evaluation Committee. The Evaluation Committee will provide guidance and additional instructions at the time best and final offers are requested. Any best and final offers must be received by the Issuing Office at the time and date specified in Section 1.03, Significant Dates (page 5). If best and final offers are not requested by the Evaluation Committee, or if requested and not submitted by an offeror, the offeror's previous submittal will be construed as the offeror's best and final offer. After best and final offers are received, final evaluations will be conducted for an award.

1.11 COSTS FOR PROPOSAL PREPARATION

Any and all costs incurred by an offeror in preparing and submitting a proposal, conducting discussions, and making presentations shall be at the offeror's sole expense and are the offeror's sole responsibility. This includes the cost of any site visits by an offeror.

1.12 DISQUALIFICATION OF PROPOSALS

The EUTF reserves the right to consider as acceptable only those proposals submitted in compliance with all the requirements set forth in this RFP and which demonstrate an understanding of the issues involved and the scope of work. Any proposal offering any other set of terms and conditions, or any terms or conditions contradictory to those included in this RFP, may be disqualified.

An offeror may be disqualified and the offeror's proposal may be rejected for any one or more of the following non-exclusive reasons as solely determined by the Evaluation Committee:

- A. Proposal is received after the established proposal submission deadline.
- B. Proposal is not properly completed or signed or fails to include notarized evidence of authority of the officer submitting the proposal to submit such proposal.
- C. Proposal is submitted on a form other than that furnished by the EUTF, or an exact copy thereof.
- D. Failure to possess proper licenses, facilities, equipment or sufficient professional experience to perform the services as proposed.

- E. Proposal shows any noncompliance with applicable laws, alterations of form, conditional proposals, incomplete proposals, un-initialed erasures, other defects, or prices which are obviously unbalanced.
- F. Failure to submit any required samples of reports or other documents.
- G. Failure to submit written answers to any questions from the Evaluation Committee or Procurement Officer.
- H. Being in arrears on existing contracts with the State, having defaulted on a previous State contract or being delinquent on tax payments due to the State of Hawaii.
- I. Adding on by the offeror of any provision reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.
- J. If there is evidence to the Evaluation Committee's sole satisfaction that collusion exists among offerors, any or all proposals may be rejected and the participants in such collusion shall be barred from future proposal submissions.

1.13 PROPOSAL AMENDMENTS

The EUTF reserves the right to amend this RFP at any time prior to the closing date for best and final offers.

1.14 CANCELLATION OF RFP; REJECTION OF PROPOSALS

This RFP may be cancelled and any or all proposals may be rejected in whole or in part, when it is determined to be in the best interests of the EUTF.

1.15 SELECTION OF CONTRACTOR AND EXECUTION OF CONTRACT

Award, if any, shall be made to the responsible offeror whose proposal is the highest scoring and most responsive. If award is made, the successful offeror will be required to enter into a formal written contract with the EUTF. A copy of the required form of contract and applicable General Conditions can be found in Section Five of this RFP. The successful proposal will be incorporated in the resulting contract by reference. To the extent that the successful proposal conflicts with the RFP, the terms of the RFP shall govern unless otherwise agreed upon by the EUTF in the contract. HRS Chapter 87A and the EUTF's administrative rules, as they may be amended from time to time, shall also be a part of the resulting contract.

1.16 RESPONSIBILITY OF OFFERORS

Each offeror is advised that if awarded a contract under this RFP, the offeror must show compliance with Chapters 237, 383, 386, 392 and 393, HRS, at the time of the award via Hawaii Compliance Express (HCE).

1. Chapter 237, tax clearance;
2. Chapter 383, unemployment insurance;
3. Chapter 386, workers' compensation;

4. Chapter 392, temporary disability insurance;
5. Chapter 393, prepaid health care; and
6. One of the following:
 - a. Be a "Hawaii business"; or
 - b. Be a "compliant non-Hawaii business".

A "Hawaii business" is registered and incorporated or organized under the laws of the State of Hawaii ("State").

A "compliant non-Hawaii business" is not incorporated or organized under the laws of the State but is registered to do business in the State.

Final Payment Requirements. Contractor is required to show compliance via HCE for final payment on the contract.

An original "Certification of Compliance for Final Payment" (SPO Form-22), will be required for final payment. A copy of the Form is available at www.spo.hawaii.gov. Select "Forms for Vendors/Contractors" from the Hawaii Public Procurement Code, Chapter 103D, HRS, menu.

SECTION TWO

PROPOSAL

2.01 PROPOSAL PREPARATION

This section of the RFP describes the proposal format, content, and requirements. The intent is to standardize proposals to a degree where comparisons may be made among the proposals using equitable measurements. This is not an attempt to limit the contents of any proposal and an offeror may include any additional information that it deems to be pertinent and that it believes would assist the Evaluation Committee in its review of the offeror's proposal. The proposal should be written in a clear, straightforward way, describing the offeror's response to the requirements of this proposal. The proposal should not include materials that are not essential to the proposal's utility and clarity.

Each responsive proposal will be reviewed by the Evaluation Committee (or its designees) for conformity with the requirements of this proposal.

Each proposal shall contain the following sections:

Section I:	Proposal Transmittal Letter
Section II:	Offer Form OF-1
Section III:	Executive Summary
Section IV:	Insurance Program
Section V:	Marketing Summary
Section VI:	Broker Services
Section VII:	Certification

Attachment A: Staff Resumes

2.02 PROPOSAL TRANSMITTAL LETTER

A transmittal letter must be included as part of the proposal. The transmittal must be on the offeror's business letterhead, signed by an individual authorized to legally bind the offeror, dated, notarized, and be affixed with the offeror's corporate seal, if any. Evidence shall be submitted showing the individual's authority to bind the offeror, e.g., corporate resolution, bylaws, etc.

The proposal transmittal letter shall also contain the following:

- A. Contact Person and Key Personnel. The letter shall include the name of a duly authorized person that the EUTF is to contact regarding the offeror's proposal, and that person's address, telephone/fax numbers, and e-mail address. The letter shall also include the names and positions of all key personnel who will handle the EUTF's account.
- B. Legal Entity. A statement indicating that the offeror is an individual, partnership, corporation, or other legal entity. If the offeror is a partnership, corporation, or other legal entity, the letter must state: (1) the date offeror was incorporated or

organized; (2) the place where the offeror was incorporated or organized; (3) the offeror's principal place of business; (4) all states where the offeror is licensed or otherwise authorized to transact business as an insurance broker; and (5) the names of all the offeror's parent, affiliate, and subsidiary organizations.

- C. Terms and Conditions. A statement that the offeror understands and will comply with all terms and conditions of the RFP (including the General Conditions). If an offeror does not plan to comply with any of the terms or conditions of the RFP, this must be clearly stated and all exceptions listed and fully described. If an offeror desires additional terms and conditions as part of any contract resulting from this RFP, a copy of all such terms and conditions must be provided as part of the offeror's proposal. No additional terms and conditions will be considered unless provided as part of offeror's proposal. The EUTF reserves the right to not accept any exceptions or any additional terms and conditions proposed by an offeror.
- D. Assumptions or Constraints. A statement on whether the proposal contains any assumptions or constraints and identifying and describing each such assumption and constraint. If neither assumptions nor constraints are included in the offeror's proposal, a statement to that effect must be made.
- E. Deviations. If the proposal deviates from the specifications or requirements of the RFP, a statement must be included identifying and describing each such deviation. If no deviations are included in offeror's proposal, a statement to that effect must be made.
- F. Non-Discrimination. A statement stating that the offeror does not discriminate in employment practices with regard to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin, citizenship status, genetic information, sexual orientation, AIDS/HIV, arrest and court record, credit history or credit report, handicap or disability must be included.
- G. Subcontracting. A statement that the services and work described in the RFP shall be performed by the offeror and shall not be subcontracted or assigned without the prior written approval of the EUTF.
- H. Professional Liability. The letter shall describe what professional liability coverage that the offeror is willing to provide to cover losses or damages that the EUTF or the EUTF trustees may suffer: (1) arising out of offeror's performance of the contract or offeror's providing or failing to provide services required under the contract; and/or (2) as a result of acts or omissions of the offeror acting as an insurance broker for the EUTF.

2.03 OFFER FORM OF-1

Include a signed Offer Form OF-1 Appendix B with the exact legal name of the offeror as registered with the State Department of Commerce and Consumer Affairs or its Division of Insurance, if applicable, offeror's address, and the name, mailing address, email address, and telephone and fax number (s) of the person the EUTF should contact regarding offeror's proposal.

The authorized signature on the first page of the Offer Form shall be an original signature in ink. If unsigned or the affixed signature is a facsimile or a photocopy, the offeror's proposal may be rejected unless accompanied by other material, containing an original signature that shows that the proposal is legally binding on the offeror.

2.04 EXECUTIVE SUMMARY

The executive summary shall clearly and concisely summarize and highlight the contents of the proposal in such a way as to provide the Evaluation Committee with a broad understanding of the entire proposal.

2.05 EXPERIENCE AND CAPABILITIES

Provide a complete, related and current client listing. Indicate the number of years the Offeror has been in business and the number of years Offeror has performed services specified in this RFP. Include a list of key personnel and associated resumes for those who will be dedicated to this project. Include a list of at least three (3) references from the Offeror's client listing that may be contacted by the State as to the Offeror's past and current performance, including names, titles, organizations, telephone numbers, email addresses and postal addresses. Provide a summary listing of judgments or pending lawsuits or actions against: adverse contract actions, including terminations, suspensions, imposition of penalties, or other actions relating to failure to perform or deficiencies in fulfilling contractual obligations against your firm. If none, so state. Provide a list of clients that did not renew their contracts with your firm for the past five (5) years.

2.06 INSURANCE PROGRAM

This section shall include a detailed description of how you propose to structure an insurance program for the EUTF and its trustees. The description should describe: (a) the nature and extent of the proposed insurance coverages, including any special coverages; (b) the proposed limits and deductibles; (c) the relationships between the proposed coverages; (d) to the extent known, the nature of all major or significant exclusions that may apply to the proposed coverages; and (e) to the extent known, the significant terms and conditions that may apply to the proposed coverages. Your description should compare the proposed insurance program to that currently maintained by the EUTF.

2.07 MARKETING SUMMARY

This section shall include a detailed description of how you propose to market the EUTF's required insurance coverages. This description should include: (a) all elements and steps of the proposed marketing program, including a timeline for the marketing process; (b) the names of the insurance carriers you would solicit for the proposed insurance program; and (c) the process and methodology of how you will rank or select insurers for the EUTF insurance program. The description should also provide information regarding the size, financial stability, and responsibility of the insurance carriers that you would solicit for the EUTF insurance program, including the ratings of such insurance carriers by agencies such as Bests.

Appendix E provides a form to identify the insurers you wish to use. Complete Appendix E by listing insurers in order of preference. Show the complete name of each insurance company, the name of any insurer group that the company is affiliated with, the name of any surplus lines broker or managing general agent, whether the insurer is admitted in Hawaii and the current Best's rating (number and letter). If you plan to use a London market, please identify the London brokers and specific underwriters (Lloyd's syndicates or other insurers) that would be used. Be specific when you list individual insurers. For example, do not list AIG or National Union as an insurance company. Instead show National Union Fire Insurance Company.

2.08 BROKER SERVICES

This section shall include: (a) a description of the offeror's approach used to develop its action plan to accomplish the general specifications and requirements as set forth in Section 3.02 of this RFP; (b) information on the experience and professional qualifications of the offeror's personnel who will perform the work and services required under this RFP; and (c) the nature and amount of any fees that offeror would charge for the proposed broker services. With respect to item (b) above, include: (1) the names of the personnel who will handle the account; (2) describe the functions that such personnel will perform with respect to the EUTF's account; (3) provide the office locations of such personnel; (4) describe the experience that such personnel have with accounts similar to the EUTF; and (5) provide a resume for each of the personnel identified as part of Attachment C to the proposal.

2.09 CERTIFICATION

The proposal shall include a certification that:

The proposed prices and any cost data were arrived at independently, without consultation, communication, or agreement with any other offeror or competitor.

Unless otherwise required by law, the prices and cost data that were submitted have not been knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor prior to the award of the contract.

No attempt was made or will be made by each offeror to include any other person or firm to submit or not to submit a price for the purpose of restricting competition.

2.10 PROPOSAL GUARANTY

No proposal guaranty is required for this RFP.

2.11 PERFORMANCE AND PAYMENT BONDS

No performance or payment bond is required for this RFP.

2.12 CONFIDENTIAL INFORMATION

The offerors' proposals and all information, data, and other material provided by the offeror to the State shall be subject to the Uniform Information Practices Act, chapter 92F, HRS. The offeror shall designate in writing to the Procurement Officer those

portions of its proposal that contain trade secrets or other proprietary data that are to remain confidential subject to section 3-122-58, HAR. The offeror shall state in its written communication to the Procurement Officer, the reasons for designating the material as confidential. The offeror shall submit the material designated as confidential in such manner that the material is readily separable from the rest of offeror's proposal in order to facilitate inspection of the non-confidential portion of the proposal.

Offerors should note that they cannot designate their prices as confidential. Following award of the contract, all offerors' proposed prices will not be withheld from disclosure as confidential.

SECTION THREE

SPECIFICATIONS AND REQUIREMENTS

3.01 OBJECTIVE

The purpose of this proposal is to select a qualified insurance broker to service the EUTF and to provide the following insurance coverage for its Board of Trustees: (1) public officials liability insurance, fiduciary liability insurance, fidelity bond coverage and cyber risk liability, and/or (2) other insurance that may be requested by the EUTF Board of Trustees.

If awarded a contract to provide insurance broker services, contractor agrees to provide the following work and services in a satisfactory, timely and proper manner and in accordance with the specifications, general proposal requirements and conditions, and appendices included herein.

3.02 GENERAL SPECIFICATIONS AND REQUIREMENTS

- A. Assessment. The contractor shall provide the Board and EUTF staff with an assessment and recommendations regarding the EUTF's insurance program. As part of its assessment, the contractor shall assess the risk and loss exposures and shall analyze the insurance needs and requirements of the EUTF and its Board. As part of its recommendations, the contractor shall recommend any needed or desirable changes or modifications to the EUTF's current insurance program, coverages, and policies. The contractor shall provide these assessments at the Board's request and at least once annually at an agreed-upon time well in advance of the expiration dates for the EUTF's then current insurance policies.
- B. Design of Insurance Program. The contractor shall assist the Board in designing and determining the EUTF's insurance program, e.g., the types and nature of the insurance coverages to be obtained, the limits and deductibles of such coverages, and the terms and conditions of such coverages. This shall include providing advice and information as requested by the Board or EUTF staff and assisting in the wording of insurance policies. At a minimum, the EUTF insurance program must meet the requirements set forth in Section 87A-25(4) and (5), Hawaii Revised Statutes.
- C. Procurement of Insurance. Prior to the expiration of EUTF's current insurance contracts, the contractor shall obtain proposals from insurance carriers to provide insurance coverage for the EUTF and its Board. The contractor shall use its best efforts to obtain quality proposals at the lowest reasonable cost from financially responsible insurance carriers. Prior to seeking proposals, the contractor shall advise the Board and EUTF staff as to how the contractor will obtain and evaluate insurance proposals for the EUTF's insurance program. The contractor shall analyze and evaluate all proposals received and prepare a written report and recommendations to the EUTF as to the proposals. The contractor shall present its report and recommendations to the Board and EUTF staff. Based on directions from the Board and EUTF staff, the contractor shall take all steps necessary to assist the

EUTF in obtaining the desired insurance coverage. The contractor shall review all insurance binders, policies, certificates, and other documents to ensure wording is complete and accurate.

- D. Claims. The contractor shall assist the EUTF in setting up any needed claims procedures. The contractor shall assist the EUTF in notifying applicable insurance carriers as to claims made or threatened against the EUTF or its Board. The contractor shall assist the EUTF in handling or processing claims with the applicable insurance carriers, including, but not limited to, providing advice and assistance regarding disputes as to defense or coverage and/or the meaning and application of insurance policy provisions.
- E. General. The contractor shall provide ongoing consultation services to the Board and EUTF staff regarding the EUTF's insurance program and insurance issues. The contractor shall assist the Board and EUTF staff in communications with insurance carriers, including obtaining interpretations and/or answers to questions regarding past or current insurance coverages and policies. The contractor shall provide information and reports to the EUTF Board and staff as needed or requested regarding the EUTF's insurance program and other insurance issues, including, but not limited to, changes or trends in the insurance marketplace. The contractor shall at least annually provide an in-person presentation to the EUTF's Board of Trustees, if required, on EUTF's current insurance coverages and any recommendations for additional insurance and/or changes to current policies.
- F. Key Personnel. Key personnel whose names and resumes are submitted in the proposal shall not be removed from the EUTF's account without the prior approval of the EUTF Administrator. Substitute or additional personnel shall not be used for the EUTF's account until a resume is received and approved by the EUTF Administrator.
- G. Professional Liability Insurance. The contractor shall maintain in full force and effect during the term of the contract, professional liability insurance to cover losses or damages that the EUTF or the EUTF trustees may suffer: (1) arising out of contractor's performance of the contract or contractor's providing or failing to provide services required under the contract; and/or (2) as a result of acts or omissions of the contractor acting as an insurance broker for the EUTF. The contractor's insurance shall have limits and other terms and conditions as shall be agreed upon between the EUTF and the contractor. The contractor's insurance shall add the EUTF and its trustees as additional insureds with respect to the services or operations that contractor performs for the EUTF. Any insurance maintained by the EUTF or State of Hawaii shall be in excess of, and not contribute with, the contractor's insurance. The contractor's insurance shall not be canceled, limited in scope, or non-renewed until after thirty (30) days written notice is provided to the EUTF. The contractor or its insurance carrier shall provide the EUTF with certificates of insurance or other evidence that the required insurance coverage is in effect and maintained during the term of the contract. The procuring of the required insurance hereunder shall not limit the contractor's liability to the EUTF nor shall it fulfill the indemnification provisions and requirements of the contract.
- H. The contractor's assigned EUTF Account Representative shall reside on the island of Oahu.

- I. Pricing. It is expected that the selected broker will be paid from commissions generated from the purchase of the various insurance policies.

SECTION FOUR

PROPOSAL EVALUATION

4.1 GENERAL INFORMATION

Evaluation Committee. Evaluation of the proposal shall be within the sole judgment and discretion of the Evaluation Committee and the final selection will be made to the responsible offeror whose proposal is determined in writing to be the most advantageous, taking into consideration the evaluation factors set forth in this RFP. The Evaluation Committee shall consist of at least one member from a State agency, at least two Board of Trustee members, and the Contract Administrator.

Purpose. The Evaluation Committee will be responsible for reviewing, evaluating, and ranking all proposals. The rankings will be based on the evaluation criteria set forth below. No other factors or criteria shall be used in the evaluation. The Board shall make the award of contract.

4.2 EVALUATION CRITERIA

Award will be made to the responsible offeror whose proposal is determined to provide the best value to the EUTF based on the evaluation criteria listed below.

A. Broker Services.

Points will be awarded based on the nature and quality of the proposed broker services proposed by the offeror. Broker services mean the type of services described in Section 3.02 of this RFP. Points will be awarded for proposals that provide more and/or more useful services to the EUTF. Points will also be awarded based on the number and qualifications of the personnel designated to provide service to the EUTF. Points will also be awarded based on the nature and extent of professional liability insurance that the offeror is willing to maintain to protect the EUTF and its trustees. Points will also be awarded based on the size of the broker, experience handling similarly sized organizations, and extent of in-island presence. Finally, points will be awarded based on the nature and amount of any fees that would be charged by the offeror for the proposed broker services.

B. Proposed Insurance Program

Points will be awarded based on the nature and quality of the insurance program proposed by the offeror. More points will be awarded to those proposals that propose broader and more protective coverage to the EUTF and EUTF trustees. Fewer points will be awarded for coverage that is narrower or that is subject to terms and conditions that are or may be adverse to the EUTF.

C. Marketing

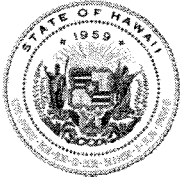
Points will be awarded based on the nature, extent, and quality of the marketing program proposed by the offeror. More points will be awarded to proposals that show a likelihood of providing the EUTF in a timely manner with the best coverage at the lowest cost from a responsible insurance carrier. Points will be awarded based on the number and quality of the insurance carriers that would be solicited.

4.3 EVALUATION SCORING SYSTEM

Broker Services	30 points
Proposed Insurance Program	40 points
Marketing	30 points

SECTION FIVE

CONTRACT AND GENERAL CONDITIONS



STATE OF HAWAII
CONTRACT FOR GOODS OR SERVICES
BASED UPON
COMPETITIVE SEALED PROPOSALS

This Contract, executed on the respective dates indicated below, is effective as of _____, _____, between _____,
(Insert name of state department, agency, board or commission)
State of Hawaii ("STATE"), by its _____,
(Insert title of person signing for State)
(hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")),
whose address is _____
_____ and _____
("CONTRACTOR"), a _____
(Insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the Contractor)
under the laws of the State of _____, whose business address and federal
and state taxpayer identification numbers are as follows: _____

RECITALS

A. The STATE desires to retain and engage the CONTRACTOR to provide the goods or services, or both, described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said goods or services or both.

B. The STATE has issued a request for competitive sealed proposals, and has received and reviewed proposals submitted in response to the request.

C. The solicitation for proposals and the selection of the CONTRACTOR were made in accordance with section 103D-303, Hawaii Revised Statutes ("HRS"), Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Subtitle 11 ("HAR"), Chapter 122, Subchapter 6, and applicable procedures established by the appropriate Chief Procurement Officer ("CPO").

D. The CONTRACTOR has been identified as the responsible and responsive offeror whose proposal is the most advantageous for the STATE, taking into consideration price and the evaluation factors set forth in the request.

E. Pursuant to _____, the STATE
(Legal authority to enter into this Contract)
is authorized to enter into this Contract.

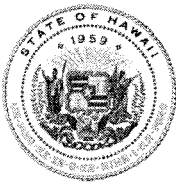
F. Money is available to fund this Contract pursuant to:
(1) _____
(Identify state sources)
or (2) _____
(Identify federal sources)

or both, in the following amounts: State \$ _____
Federal \$ _____

NOW, THEREFORE, in consideration of the promises contained in this Contract, the STATE and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the goods or services, or both, set forth in the request for competitive sealed proposals number _____ ("RFP") and the CONTRACTOR'S accepted proposal ("Proposal"), both of which, even if not physically attached to this Contract, are made a part of this Contract.

2. Compensation. The CONTRACTOR shall be compensated for goods supplied



STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF _____)
) SS.
_____ COUNTY OF _____)

On this _____ day of _____, _____ before me appeared
_____ and _____, to me
known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are
_____ and _____ of
_____, the
CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said
instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said
instrument as the free act and deed of the CONTRACTOR.

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit _____

Doc. Description: _____

(Notary Stamp or Seal)

Notary Signature Date

NOTARY CERTIFICATION



STATE OF HAWAII
CONTRACTOR'S
STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"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 per cent (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. (Section 84-3, HRS).

On behalf of _____, CONTRACTOR, the undersigned does declare as follows:

1. CONTRACTOR ☐ is* ☐ is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

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

* Reminder to Agency: If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, the Agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).

CONTRACTOR

By _____
(Signature)

Print Name _____

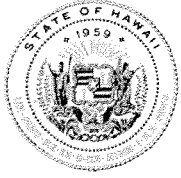
Print Title _____

Name of Contractor _____

Date _____



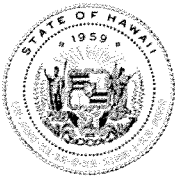
STATE OF HAWAII
SCOPE OF SERVICES



STATE OF HAWAII
COMPENSATION AND PAYMENT SCHEDULE



STATE OF HAWAII
TIME OF PERFORMANCE



STATE OF HAWAII

**CERTIFICATE OF EXEMPTION
FROM CIVIL SERVICE**

1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development (“DHRD”).*

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).

(Signature)

(Date)

(Print Name)

(Print Title)

* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

- (1) It involves the delivery of completed work or product by or during a specific time;
- (2) There is no employee-employer relationship; and
- (3) The authorized funding for the service is from other than the "A" or personal services cost element.

NOTE: Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§ 76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and 76-16(b)(12) exemptions.

2. By the Director of DHRD, State of Hawaii.

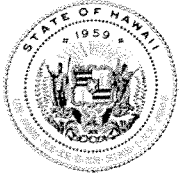
I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, HRS.

(Signature)

(Date)

(Print Name)

(Print Title, if designee of the Director of DHRD)



STATE OF HAWAII
SPECIAL CONDITIONS

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
 - h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
 - i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.
3. Personnel Requirements.
- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
 - b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or 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 Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.
6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.
- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:
 - (1) The Assignee assumes all of the CONTRACTOR'S obligations;
 - (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
 - (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
 - b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
 - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
- 7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
 - 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
 - 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
 - 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
 - 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
 - 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
 - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
 - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

- d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.
- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
 - (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
 - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
 - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
 - g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
 - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
 - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
 - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
 - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, 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 Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The 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, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
 - h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
 - i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.
3. Personnel Requirements.
- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
 - b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or 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 Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.
6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.
- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:
 - (1) The Assignee assumes all of the CONTRACTOR'S obligations;
 - (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
 - (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
 - b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
 - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
- 7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
 - 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
 - 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
 - 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
 - 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
 - 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
 - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
 - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

- d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.
- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
 - (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
 - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
 - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
 - g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
 - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
 - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
 - b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
 - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
 - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, 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 Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The 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, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

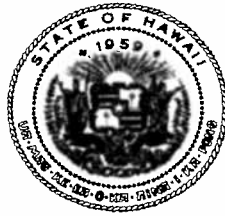
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

APPENDICES

APPENDIX A:	2010/2011 ANNUAL REPORT OF EUTF
APPENDIX B:	OFFER FORM OF-1
APPENDIX C:	CURRENT INSURANCE POLICIES
APPENDIX D:	EUTF FINANCIAL STATEMENT
APPENDIX E:	MARKETING SUMMARY

APPENDIX A

2010/2011 ANNUAL REPORT OF EUTF



ANNUAL REPORT

FISCAL YEAR 2010-11

**Hawaii Employer-Union Health Benefits Trust Fund
State of Hawaii**

December 2011

**THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
ANNUAL REPORT
Fiscal Year 2010 - 2011**

This report presents an overview of the organization and activities of the Hawaii Employer-Union Health Benefits Trust Fund ("EUTF") for the fiscal year 2010-2011. The EUTF is the organization that administers the health and life insurance plans for eligible state and county employees and retirees and their dependents. The EUTF was established under Chapter 87A of the Hawaii Revised Statutes and is administratively attached to the Department of Budget and Finance. The office is located at Suite 1520, City Financial Tower, Honolulu, Hawaii.

The EUTF operates according to administrative rules originally adopted in February 2003 and most recently revised in 2009. The administrative rules were formulated to meet the requirements of Chapter 87A,

MAJOR EVENTS IN FISCAL YEAR 2010-2011

Changes in Personnel: A new benefit plan consultant was hired, a new Administrator was hired and new Board members were appointed at the beginning of 2011.

HSTA VEBA coverage for approximately 15,000 employees and retirees was transitioned to EUTF administration effective January 1, 2011.

Federally mandated plan changes were made to comply with the Affordable Care Act to be effective July 1, 2011.

Requests for Proposals for all benefit plans were released, proposals were evaluated and awards of contracts were made.

TRUST FUND ORGANIZATION

Board of Trustees

The EUTF is administered by a board of trustees which is responsible for determining the benefit plans offered, negotiating and entering into contracts with insurance carriers and plan administrators, establishing eligibility criteria and management policies for the EUTF, and overseeing all EUTF activities.

There are ten trustees, five representing the public employers and five representing employee-beneficiaries, including a retiree representative. The trustees as of June 30, 2011 are shown below:

Employer Trustees

- Loretta Fuddy, Director, Dept. of Health
- Audrey Hidano, Deputy Director, Dept. of Labor and Industrial Relations
- Dean Hirata, Deputy Director, Dept.

Employee-Beneficiary Trustees

- George Kahoohahano, Retirees
- Derek Mizuno, HGEA
- Karolyn Mossman, HSTA

- of Budget and Finance
- Everett Kaneshige, Deputy Director, Dept. of Commerce and Consumer Affairs
- Celeste Nip, HFFA
- Sunshine Topping, Director, Dept. of Human Resources and Development
- Clifford Uwaine, UPW

Board officers as of June 30, 2011 were Dean Hirata, Chairperson, Loretta Fuddy, Vice-Chairperson and George Kahoonohano, Secretary-Treasurer. The officers began their term February 2011 due to the new Board being appointed. New officers were elected July 1, 2011.

Administrator and Staff

The EUTF is managed by an administrator who is hired by and reports to the Board. The administrator is Barbara Coriell who started February 1, 2011.

The administrator is assisted in managing the EUTF by an assistant administrator, a financial management officer, an information systems analyst, and a health benefits program manager. EUTF staff has a total of 40 employees (including management staff and the Administrator).

The EUTF has three branches: the Financial Services Branch, Information Systems Branch, and Member Services Branch. A health benefits program manager oversees the Member Services Branch and is supported by employees assigned to customer service duties that include in person visits and phone calls and e-mails from members, handling all processing for retirees, and processing all active employee enrollment submissions. The financial management officer is supported by five accountants and three account clerks, who reconcile employee accounts, collect employer/employee contributions for health benefits, process all vendor payments, prepare monthly financial statements and coordinate an annual financial audit. The EUTF information systems analyst manages support for internal IT services, manages 1st level support for the benefits administration system, fulfills HIPAA security responsibilities, coordinates additional support services provided by DAGS/ICSD and Vitech Systems Group, Inc, and is supported by five IT staff .

Advisors, Consultants and Major Contracts

The Board employs professional consultants and advisors on certain specific issues of importance to the EUTF:

Benefits Plan Consultant: The Board utilized the services of Aon Consulting as its benefits plan consultant until December 31, 2010 at which time the contract changed to the Segal Company. Segal is one of the major national benefits consulting firms and provides access to their wide range of services from their Glendale California office.

Benefits Administration System (BAS): Vitech Systems Group, Inc. was selected to implement a new benefits administration system which went into operation in late 2009. Vitech Systems Group, Inc. is providing on-going support of the new benefits administration system.

BAS consultant: Gartner, Inc. is providing project oversight and assessment over the ongoing implementation of the multi phase benefits administration system and the necessary periodic revisions.

Investment consultants: Pension Consulting Alliance provides guidance in long term investments.

Actuary: Aon Consulting provides actuarial evaluation and analysis of the Other Post Employment Benefit (OPEB) liability for retiree health plans.

Auditor: Macias, Gini & O'Connell is the accounting firm which audits the EUTF financial records

Additional Contract: Aon Consulting provides data aggregation for submission to the Early Retiree Reimbursement Program (see below).

HEALTH AND LIFE INSURANCE BENEFIT PLANS

During fiscal year 2010-2011, the EUTF provided health and life insurance benefits through contracts with the following organizations:

- ◆ Hawaii Medical Service Association (HMSA)
 - 1. PPO Plan – 80/20
 - 2. HMO
 - 3. High Deductible Health Plan
 - 4. HSTA VEBA 90/10 & 80/20 medical & Rx plans
 - 5. Retiree PPO 90/10 plan
- ◆ Health Management Associates (HMA)
 - 1. PPO Plan 90/10
 - 2. Retiree PPO 90/10 plan
- ◆ Kaiser Permanente (Kaiser)
 - 1. Comprehensive HMO (EUTF & HSTA VEBA)
 - 2. Basic HMO
 - 3. Retiree Comprehensive HMO
- ◆ informedRx (previously NMHC Inc)
 - 1. Rx coverage for PPO plans
- ◆ Hawaii Dental Service (HDS) – Active, Retiree & HSTA VEBA plans
- ◆ Vision Service Plan (VSP) – Active, Retiree & HSTA VEBA plans
- ◆ Royal State National Insurance Company, Ltd./ChiroPlan Hawaii, Inc. (ChiroPlan) – included with all active medical plans
- ◆ Supplemental Plans
 - 1. Royal State National Insurance Company, Ltd. (Royal State)
 - 2. HMSA Supplemental
 - 3. HMSA HSTA VEBA Supplemental
- ◆ Standard Life Insurance Company (Standard) – Active & Retiree

Contracts with these organizations expired on June 30, 2010, and were extended through June 30, 2011.

For both active employees and retirees, the health benefit plans provided by the EUTF during the fiscal year were available to dependents including spouses, domestic partners and full-time students up to the age of 24.

EUTF ACTIVITY IN 2010 – 2011

HSTA VEBA Coverage Transitioned to EUTF

In May 2010 the Legislature passed Act 106, which extended the enabling law for the voluntary employees' beneficiary association (VEBA) trust, allowing the HSTA alternative health-benefits plans to remain independent for six additional months. The objective was to provide for a smoother transition of the coverage for approximately 15,000 active and retired VEBA members into EUTF's health and benefit plans effective January 1, 2011.

The EUTF worked diligently to prepare a smooth and efficient transition. However, in the summer of 2010 the Hawaii State Teachers Association VEBA trust filed a lawsuit to stop the change. Because Act 106 SLH 2010 required the HSTA VEBA members to return to the EUTF plans on January 1, 2011, and because EUTF would not know the outcome of the lawsuit for months and maybe years to come, EUTF proceeded with implementation plans to return the HSTA VEBA members to the EUTF plans on January 1, 2011.

As part of the implementation process, EUTF conducted an open enrollment for the active and retired HSTA VEBA members during the month of November 2010. However, on December 7, 2010, just 3 weeks prior to the effective date, Judge Karl Sakamoto held a hearing on the lawsuit and issued an oral ruling from the bench which stated the active and retired HSTA VEBA members must return to the EUTF health plans on January 1, 2011. However, they must be offered the same standard of benefits coverage that was provided by the then HSTA VEBA plans. In order to comply, the EUTF was required to develop new benefit plans and enrollment protocols and the corresponding enrollment system revisions specifically for the HSTA VEBA members.

Within a short three weeks period EUTF developed sixteen new medical, prescription drug, dental, vision, chiropractic and life insurance plans for active employees and retirees that provided the same standard of benefits coverage. HSTA VEBA members were offered another open enrollment and all members were transitioned to the new EUTF plans on January 1, 2011.

Affordable Care Act Plan Changes Implemented

The benefit plan design changes required for active plans by the Health Reform legislation became effective for the EUTF active employee medical plans July 1, 2011. The most notable change was the extension of the dependent child age limit to age 26. In addition the unmarried and full time student restrictions were removed. Special communication materials were developed for employees and Department Personnel

Officers and computer system changes were developed, tested and put in place. A special open enrollment was held to enable members to enroll newly eligible dependent children.

Requests for Proposals for all Benefit Plans

Working with Segal, the EUTF released Requests for Proposals for all benefit plans: Medical, Prescription Drug, Chiropractic, Dental, Vision and Life insurance. Several evaluation committees met numerous times to review proposals, interview finalists and evaluate each offering. Based on their recommendations the Board awarded contracts to be effective January 1, 2012 with options to extend through June 30, 2015. Although the benefit coverage did not change, there were carrier changes made in addition to a significant change in the financial arrangement for the PPO medical plans.

Awards which will result in carrier changes include:

PPO Medical 90/10 plan:	HMA Administrator to HMSA
Pharmacy Benefit Manager:	informed Rx to CVS Caremark *
Life insurance:	Standard to Royal State National

Financial Arrangement Change: (for other than Kaiser medical plans) The current Self Funded arrangement will change to Participating Fully Insured which could result in the return of surplus premium.

* A procurement protest was filed and implementation of this award is pending the outcome of the protest hearing.

Other notable activity during the year included:

An Investment Consultant, Pension Consulting Alliance, was hired following an RFP process; the EUTF investment policy was reviewed and approved and funds were invested accordingly.

A Custody Bank contract was awarded to Bank of Hawaii following an RFP process.

The EUTF coordinated the evaluation of employers' Other Post Employment Benefits liability which is required by GASB. Aon's actuarial staff performed the evaluation as part of an ongoing contract.

The EUTF applied and was accepted for the federal Early Retiree Reimbursement Program (ERRP) which is provided as part of the Affordable Care Act. Working with Aon as our data aggregator, the EUTF received the first reimbursement payment of \$4.6 million which was applied to reduce 2012 prescription drug rates.

OPERATIONS

Ongoing Programs and General Operations

The EUTF participates with the major State departments and counties which host pre-retirement, new hire orientation, DPO informational, and Open Enrollment sessions during the year.

During FY2011, the EUTF Member Services Branch continued to be challenged by an extremely high volume of employee-beneficiary contacts, multiple unanticipated limited open enrollment periods, furloughs, and the HSTA-VEBA transition back to EUTF coverage. The Call Center successfully handled upwards of 114,983 phone calls and staff serviced well over 6000+ walk-in visitors. Additionally, 105,703 incoming documents were imaged. 43,321 enrollment-related outbound documents were printed in-house and mailed directly to plan participants.

The Branch made significant movement towards achieving greater operational efficiencies. Acquisition of equipment (telephone and computer) and approval to re-shape the functional unit's organizational structure as well as composition have enabled much progress.

Information Systems handled the following systems issues in addition to normal work flow:

- System modifications to administer eligibility and enrollments for former HSTA VEBA members and dependents into benefit plans effective January 1, 2011
- Submitted electronic eligibility files for Early Retiree Reinsurance Program reimbursement program
- System modifications to administer extending the eligibility and enrollment of an Active employee's dependent child to age 26 for medical plan and prescription drug plan, effective July 1, 2011 due to Federal Affordable Care Act.
- System modifications to administer new split employer/employee contributions for the administrative fees
- System modifications to administer new benefit plans effective January 1, 2012

An annual audit of the EUTF, as required by Chapter 87A-25(2), is being conducted for the plan year July 1, 2010 through June 30, 2011 by Macias, Gini & O'Connell. The EUTF audited financial reports will be presented to the Board of Trustees in early 2012 and the audit report will be forwarded under separate cover.

Enrollment Counts - EUTF Active Employees

The table below shows EUTF Active Employees enrollments as of 06-16-2011

Count of Members	Benefit Plan	Type of Enrollment			Grand Total	Annual Premiums
		Self	Two-Party	Family		
Medical Plans						
	EUTF PPO (HMA) - 90/10 Plan, RSN Chiropractic	1,744	516	762	3,022	\$ 19,536,028
	EUTF PPO (HMSA) - 80/20 Plan, RSN Chiropractic	13,723	4,790	7,310	25,823	\$ 162,833,453
	EUTF HMO (HMSA), Prescription Drug, RSN Chiropractic	1,470	386	493	2,349	\$ 17,715,332
	EUTF High Deductible Health Plan (HMSA), Prescription Drug	190	53	75	318	\$ 1,892,703
	Kaiser Comprehensive, Prescription Drug, RSN Chiropractic	4,523	1,533	2,133	8,189	\$ 59,746,050
	Kaiser Basic, Prescription Drug, RSN Chiropractic	782	232	268	1,282	\$ 6,831,239
	EUTF Supplemental (HMSA), RSN Chiropractic	164	112	167	443	\$ 1,665,286
	Royal State Supplemental, Prescription Drug, RSN Chiropractic	81	85	208	374	\$ 523,860
Medical Plans Total		22,677	7,707	11,416	41,800	\$ 270,743,951
Drug Plan						
	EUTF Prescription Drug (informedRx)	15,073	5,286	8,030	28,389	\$ 41,187,890
	EUTF Supplemental informedRx Prescription Drug	165	114	167	446	\$ 751,337
Drug Plan Total		15,238	5,400	8,197	28,835	\$ 41,939,227
Dental Plan		21,272	9,892	14,137	45,301	\$ 32,845,658
Vision Plan		21,046	8,822	12,802	42,670	\$ 4,955,849
Life Insurance		53,686			53,686	\$ 2,679,468

Enrollment Counts - HSTA VB Actives

The table below shows HSTA VB Actives enrollments as of 06-16-2011

Count of Members	Benefit Plan	Type of Enrollment			Grand Total	Annual Premiums
		Self	Two-Party	Family		
Medical Plans						
	HMSA 80/20 Medical, Drug, RSN Chiropractic	2,134	652	1,698	4,484	\$ 16,551,091
	HMSA 90/10 Medical, Drug, RSN Chiropractic	1,796	375	1,020	3,191	\$ 14,682,708
	HMSA Supplemental Medical, Drug, Vision, RSN Chiropractic	59	61	162	282	\$ 1,114,053
	Kaiser Comprehensive Medical, Drug, RSN Chiropractic	1,154	252	612	2,018	\$ 8,125,173
Medical Plans Total		5,143	1,340	3,492	9,975	\$ 40,473,025
Dental Plan						
	HDS Dental	4,921	1,566	3,745	10,232	\$ 3,939,052
	HDS Supplemental Dental	82	64	213	359	\$ 89,572
Dental Plan Total		5,003	1,630	3,958	10,591	\$ 4,028,624
Vision Plan						
	VSP Vision	5,088	1,278	3,329	9,695	\$ 570,459
	VSP Vision - Stand Alone	66	74	196	336	\$ 24,818
Vision Plan Total		5,154	1,352	3,525	10,031	\$ 595,277
Life Insurance		12,171			12,171	\$ 308,090

Enrollment Counts - EUTF Retirees

The table below shows EUTF Retirees enrollments as of 06-16-2011

Count of Members	Benefit Plan	Type of Enrollment			Grand Total	Annual Premiums
		Self	Two-Party	Family		
Medical Plans						
EUTF PPO (HMA)						
	Retiree (Medicare)	25	26		51 \$	123,565
	Retiree (Non-Medicare)	29	27	14	70 \$	471,991
	EUTF PPO (HMA) Total	54	53	14	121 \$	595,556
EUTF PPO (HMSA)						
	Retiree (Medicare)	14,902	8,332	445	23,679 \$	70,347,240
	Retiree (Non-Medicare)	3,091	3,261	990	7,342 \$	59,419,055
	EUTF PPO (HMSA) Total	17,993	11,593	1,435	31,021 \$	129,766,295
Kaiser HMO, Prescription Drug						
	Retiree (Medicare)	3,434	1,677	108	5,219 \$	24,411,243
	Retiree (Non-Medicare)	751	675	195	1,621 \$	16,641,470
	Kaiser HMO, Prescription Drug Total	4,185	2,352	303	6,840 \$	41,052,713
Out-of-State Plan						
	Retiree (Medicare)	83	51		134	
	Retiree (Non-Medicare)	4	7		11	
	Out-of-State Plan Total	87	58		145 \$	179,283
Medical Plans Total		22,319	14,056	1,752	38,127 \$	171,593,847
Drug Plan						
EUTF Prescription Drug (informedRx)						
	Retiree (Medicare)	14,183	8,074	410	22,667 \$	77,380,459
	Retiree (Non-Medicare)	3,802	3,410	1,029	8,241 \$	27,537,997
	EUTF Prescription Drug (informedRx) Total	17,985	11,484	1,439	30,908 \$	104,918,456
Drug Plan Total		17,985	11,484	1,439	30,908 \$	104,918,456
Dental Plan		22,269	13,831	1,625	37,725 \$	19,695,947
Vision Plan		22,228	14,177	1,759	38,164 \$	3,208,668
Life Insurance		33,940			33,940 \$	1,673,714
Medicare Part B Reimbursements - EUTF and HSTA VB retirees		21,778	8,628		\$	46,606,083

Enrollment Counts - HSTA VB Retirees

The table below shows HSTA VB Retirees enrollments as of 06-16-2011

Count of Members	Benefit Plan	Type of Enrollment			Grand Total	Annual Premiums
		Self	Two-Party	Family		
Medical Plans						
HMSA 90/10 Medical, Drug, RSN Chiropractic						
	Retiree (Medicare)	612	509	26	1,147	\$ 3,437,213
	Retiree (Non-Medicare)	396	592	96	1,084	\$ 6,735,419
HMSA 90/10 Medical, Drug, RSN Chiropractic Total		1,008	1,101	122	2,231	\$ 10,172,632
HMSA 90/10 Medical, RSN Chiropractic						
	Retiree (Medicare)	3	4		7	\$ 12,827
	Retiree (Non-Medicare)		2		2	\$ 10,644
HMSA 90/10 Medical, RSN Chiropractic Total		3	6		9	\$ 23,471
Kaiser Comprehensive Medical, Drug, RSN Chiropractic						
	Retiree (Medicare)	73	53	5	131	\$ 379,204
	Retiree (Non-Medicare)	57	50	13	120	\$ 665,192
Kaiser Comprehensive Medical, Drug, RSN Chiropractic Total		130	103	18	251	\$ 1,044,396
EUTF Out-of-State Plan - Retiree						
	Retiree (Medicare)	1			1	
	Retiree (Non-Medicare)	1			1	
EUTF Out-of-State Plan - Retiree Total		2			2	\$ 3,249
Medical Plans Total		1,143	1,210	140	2,493	\$ 11,243,748
Dental Plan		1,134	1,198	129	2,461	\$ 717,815
Vision Plan		1,144	1,210	140	2,494	\$ 116,688
Life Insurance		2,557			2,557	\$ 63,997

Waived Enrollments Counts

The tables below show calculated Waived counts as of 06-16-2011

Total Number of EUTF Active Employees: **66,964**

Waived Plans	Total
Medical Plans	15,189
Drug Plans	15,642
Dental Plan	11,072
Vision Plan	14,263
Life Insurance	1,107

Total Number of EUTF Retirees: **41,785**

Waived Plans	Total
Medical Plans	1,165
Drug Plans	1,555
Dental Plan	1,599
Vision Plan	1,127
Life Insurance	198

Enrollment Counts - All

The table below shows All employees as of 06-16-2011

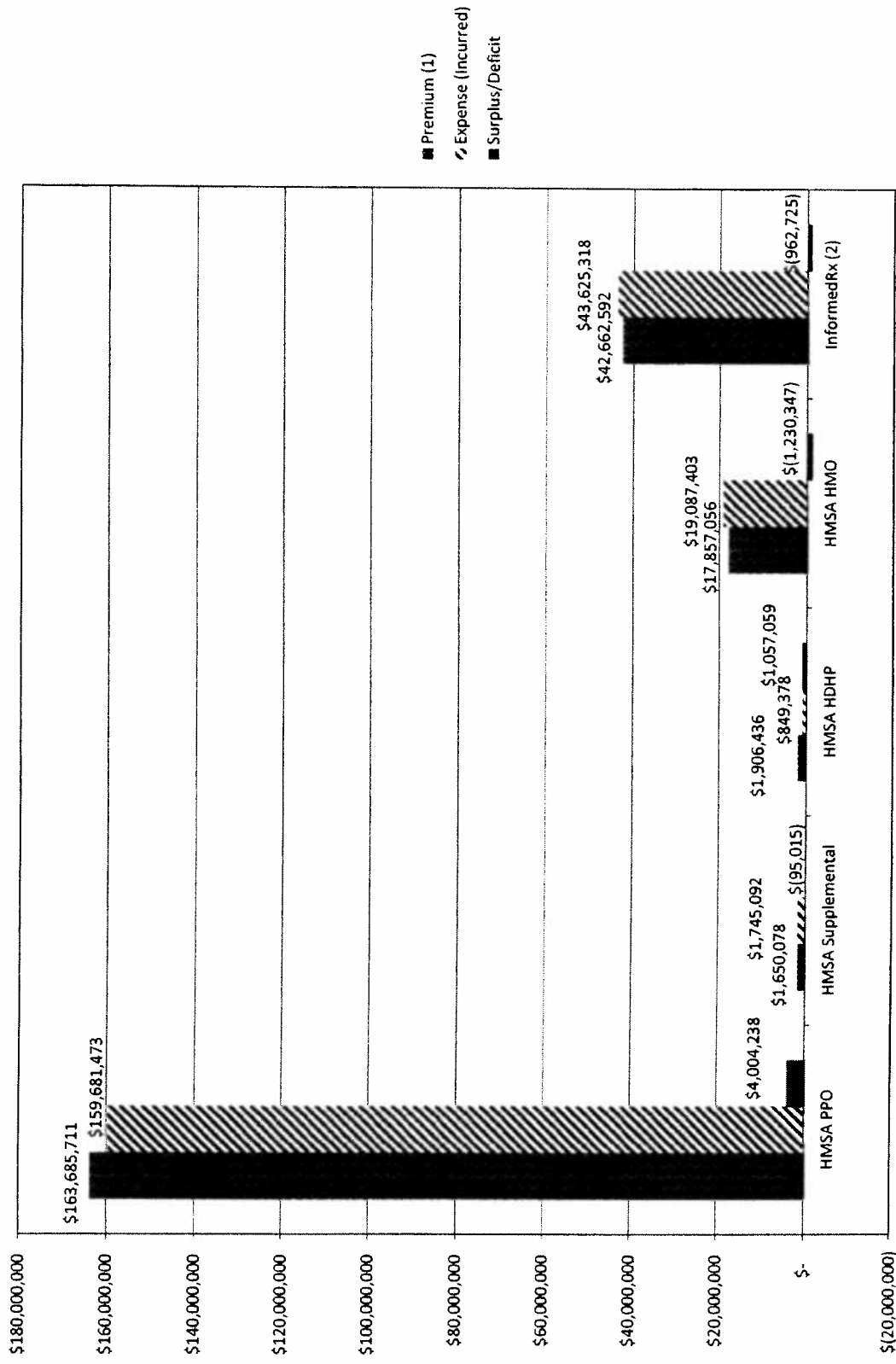
Count of Members	Benefit Plan				
Employer	Medical Plans	Drug	Dental Plan	Vision Plan	Life Insurance
City and County of Honolulu					
Active	7,023	4,952	7,559	7,191	8,582
Retiree (Medicare)	4,317	3,089			
Retiree (Non-Medicare)	2,165	1,813	6,383	6,481	5,316
City and County of Honolulu Total	13,505	9,854	13,942	13,672	13,898
Honolulu Board of Water Supply					
Active	426	330	455	428	507
Retiree (Medicare)	437	342			
Retiree (Non-Medicare)	127	107	556	566	468
Honolulu Board of Water Supply Total	990	779	1,011	994	975
County of Hawaii					
Active	1,939	1,504	2,014	1,936	2,314
Retiree (Medicare)	799	744			
Retiree (Non-Medicare)	544	552	1,298	1,337	1,137
County of Hawaii Total	3,282	2,800	3,312	3,273	3,451
Hawaii Dept of Water Supply					
Active	142	119	148	145	165
Retiree (Medicare)	62	60			
Retiree (Non-Medicare)	21	23	83	83	68
Hawaii Dept of Water Supply Total	225	202	231	228	233
County of Kauai					
Active	952	815	1,012	964	1,180
Retiree (Medicare)	452	422			
Retiree (Non-Medicare)	248	265	680	700	545
County of Kauai Total	1,652	1,502	1,692	1,664	1,725
County of Maui					
Active	2,015	1,105	2,125	2,013	2,424
Retiree (Medicare)	719	443			
Retiree (Non-Medicare)	403	300	1,107	1,127	934
County of Maui Total	3,137	1,848	3,232	3,140	3,358
State of Hawaii					
Active	38,785	19,869	42,067	39,541	50,052
Retiree (Medicare)	23,582	17,567			
Retiree (Non-Medicare)	6,743	5,181	30,078	30,363	28,028
State of Hawaii Total	69,110	42,617	72,145	69,904	78,080
Hawaii Public Charter Schools					
Active	493	141	512	483	633
Retiree (Medicare)	1				
Retiree (Non-Medicare)			1	1	1
Hawaii Public Charter Schools Total	494	141	513	484	634
Grand Total	92,395	59,743	96,078	93,359	102,354

Enrollment Counts - All

The table below shows All employees as of 06-16-2011

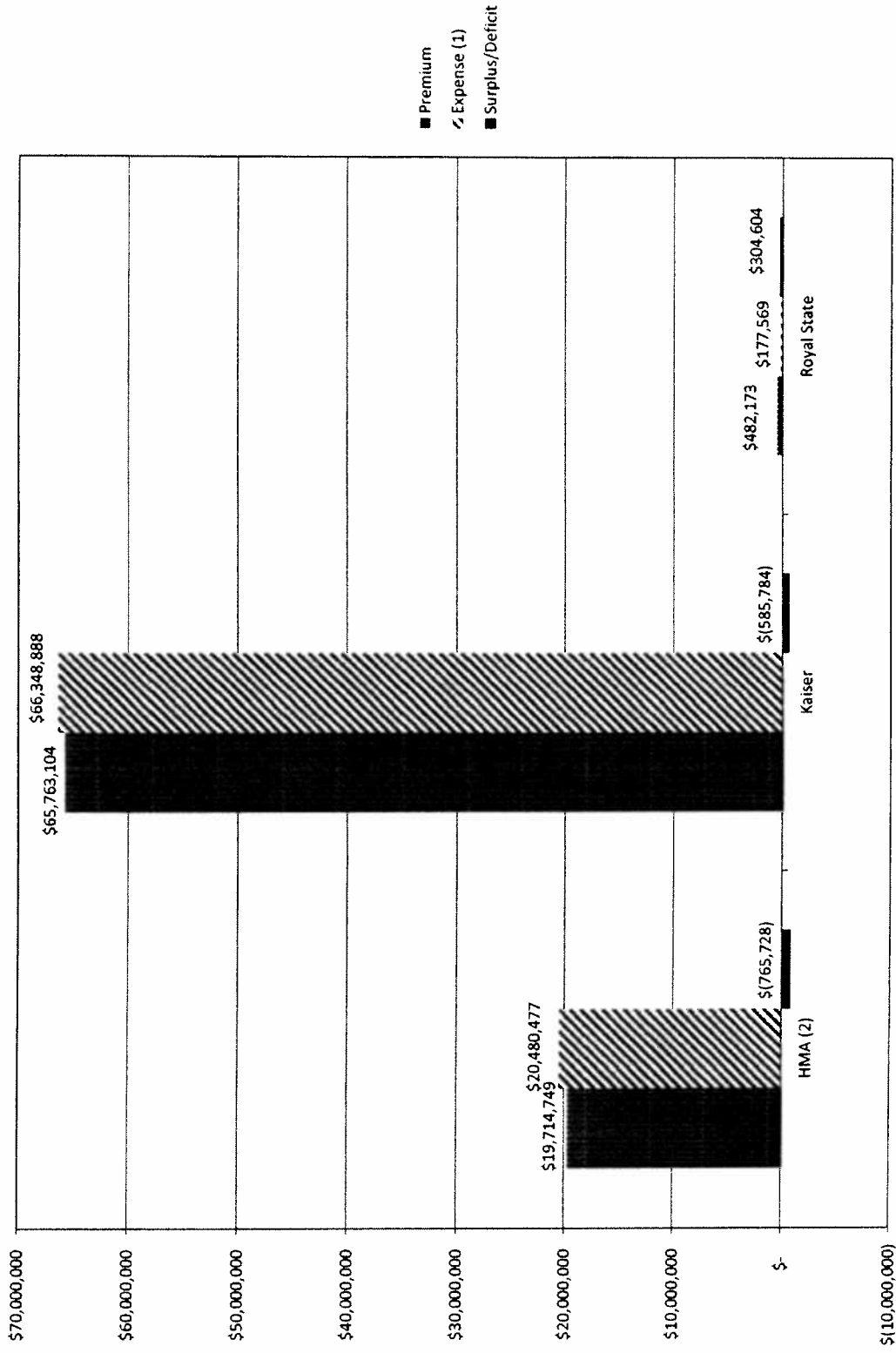
Count of Members	Benefit Plan Medical Plans	Drug	Dental Plan	Vision Plan	Life Insurance
Actives by Bargaining Unit					
BU 00	1,173	818	1,293	1,208	1,561
BU 01	6,917	4,799	7,372	7,049	8,618
BU 02	544	373	586	555	671
BU 03	11,270	7,874	12,648	11,917	15,329
BU 04	444	333	536	505	617
BU 05	10,296	158	10,943	10,327	12,569
BU 06	640	506	695	647	851
BU 07	2,979	1,923	3,108	2,875	3,656
BU 08	2,597	1,659	2,650	2,423	3,398
BU 09	1,212	692	1,298	1,225	1,506
BU 10	2,389	1,497	2,563	2,443	3,015
BU 11	1,629	1,161	1,737	1,600	1,959
BU 12	2,623	1,922	2,724	2,632	2,981
BU 13	7,062	5,120	7,739	7,295	9,126
Actives by Bargaining Unit Total	51,775	28,835	55,892	52,701	65,857
Retirees (Medicare)					
Retiree	26,367	19,942			
Survivor	4,002	2,725			
Retirees (Medicare) Total	30,369	22,667			
Retirees (Non-Medicare)					
Retiree	9,264	6,953	35,268	35,703	36,497
Survivor	987	1,288	4,918	4,955	
Retirees (Non-Medicare) Total	10,251	8,241	40,186	40,658	36,497
Grand Total	92,395	59,743	96,078	93,359	102,354

Hawaii Employer-Union Health Benefits Trust Fund
Annual Report as of June 30, 2011
EUTF Active Medical and Prescription Drug Plan Experience



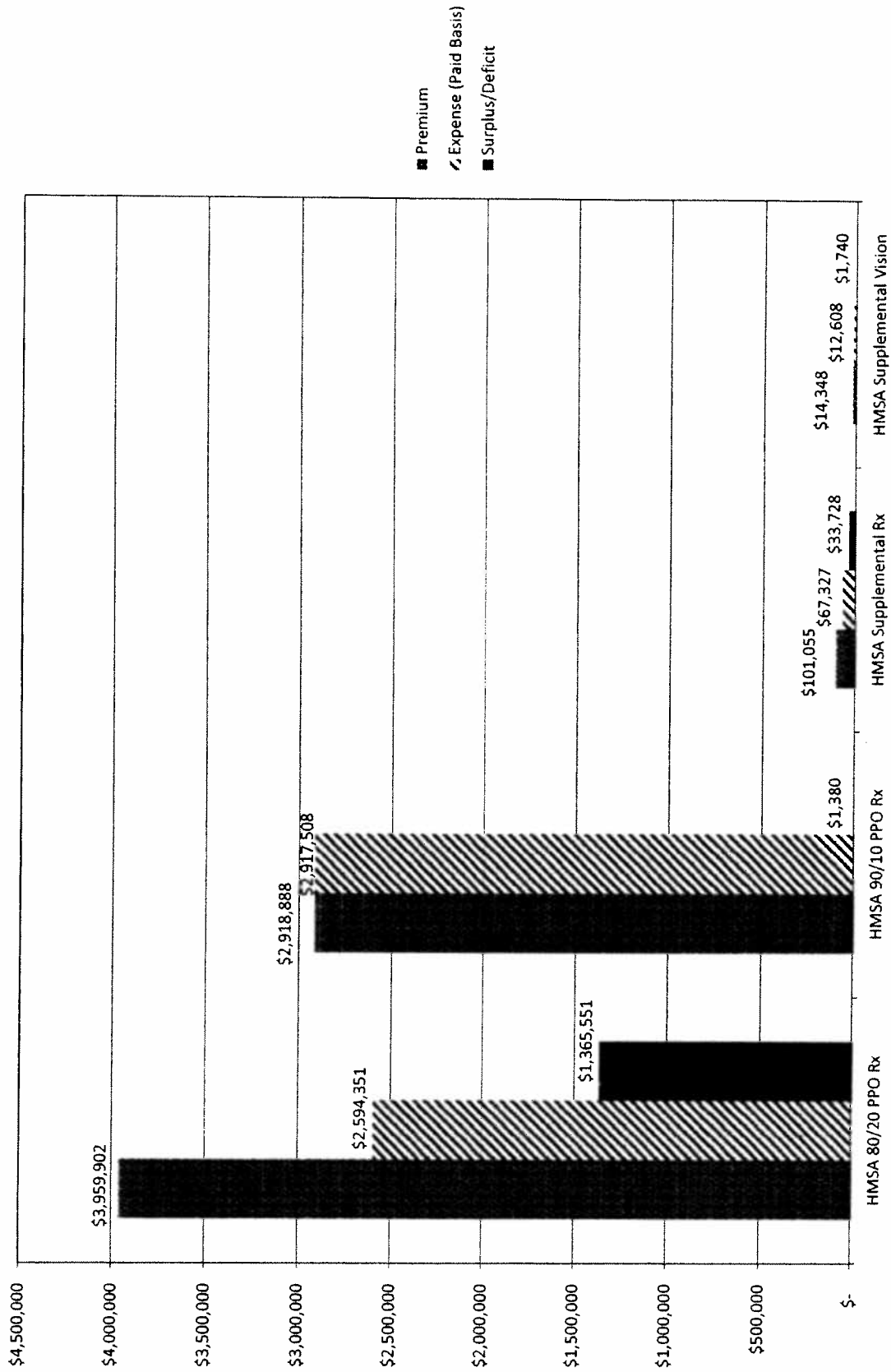
(1) Includes Employer and Employee contributions and estimated based on monthly enrollment.
(2) Does not include rebates.

Hawaii Employer-Union Health Benefits Trust Fund
Annual Report as of June 30, 2011
EUTF Active Medical and Prescription Drug Plan Experience (Continued)

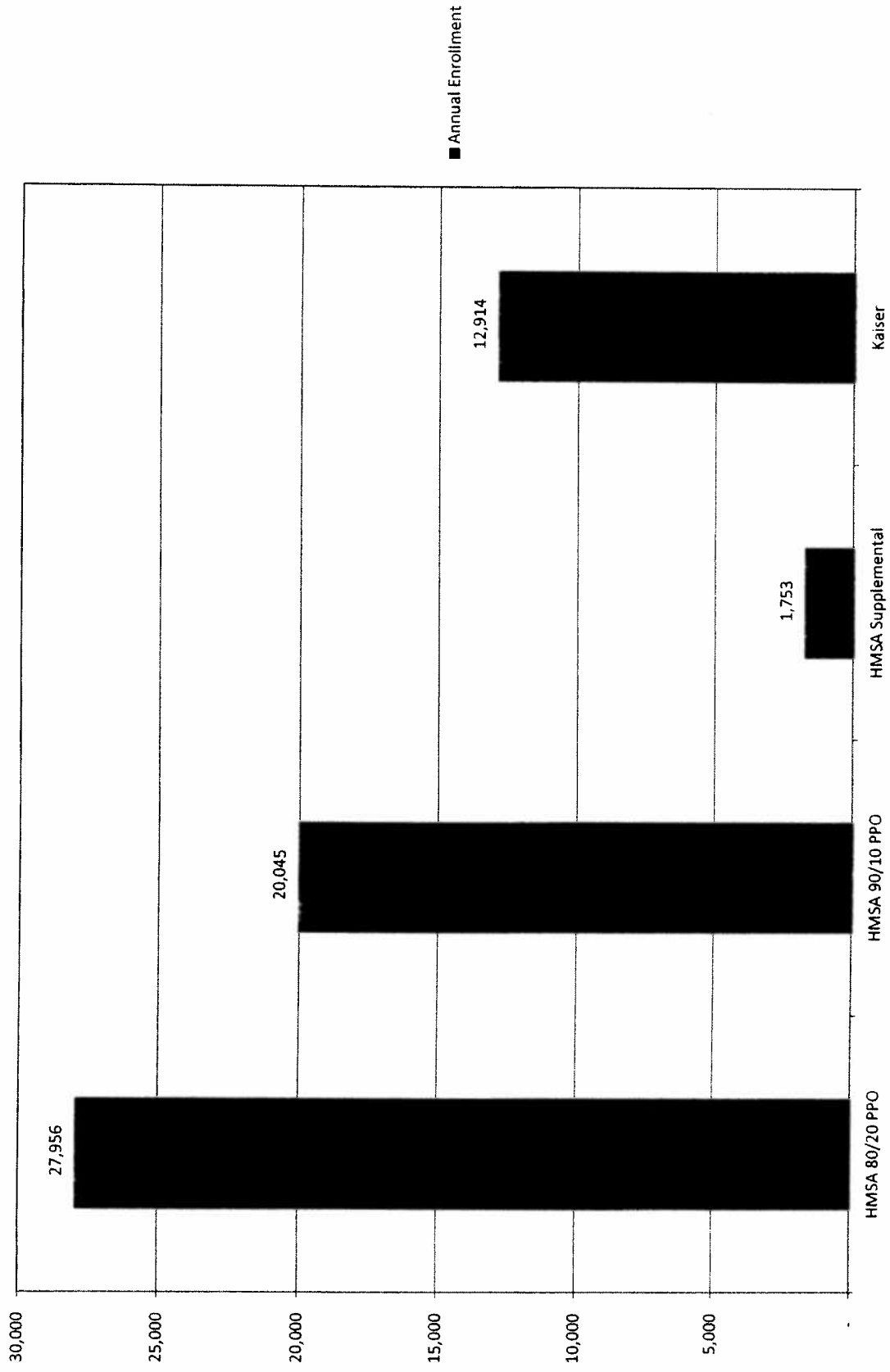


(1) HMA expense is on an incurred basis. Kaiser and Royal State expenses are on a paid basis.
 (2) Premium includes Employer and Employee contributions and is estimated based on monthly enrollment.

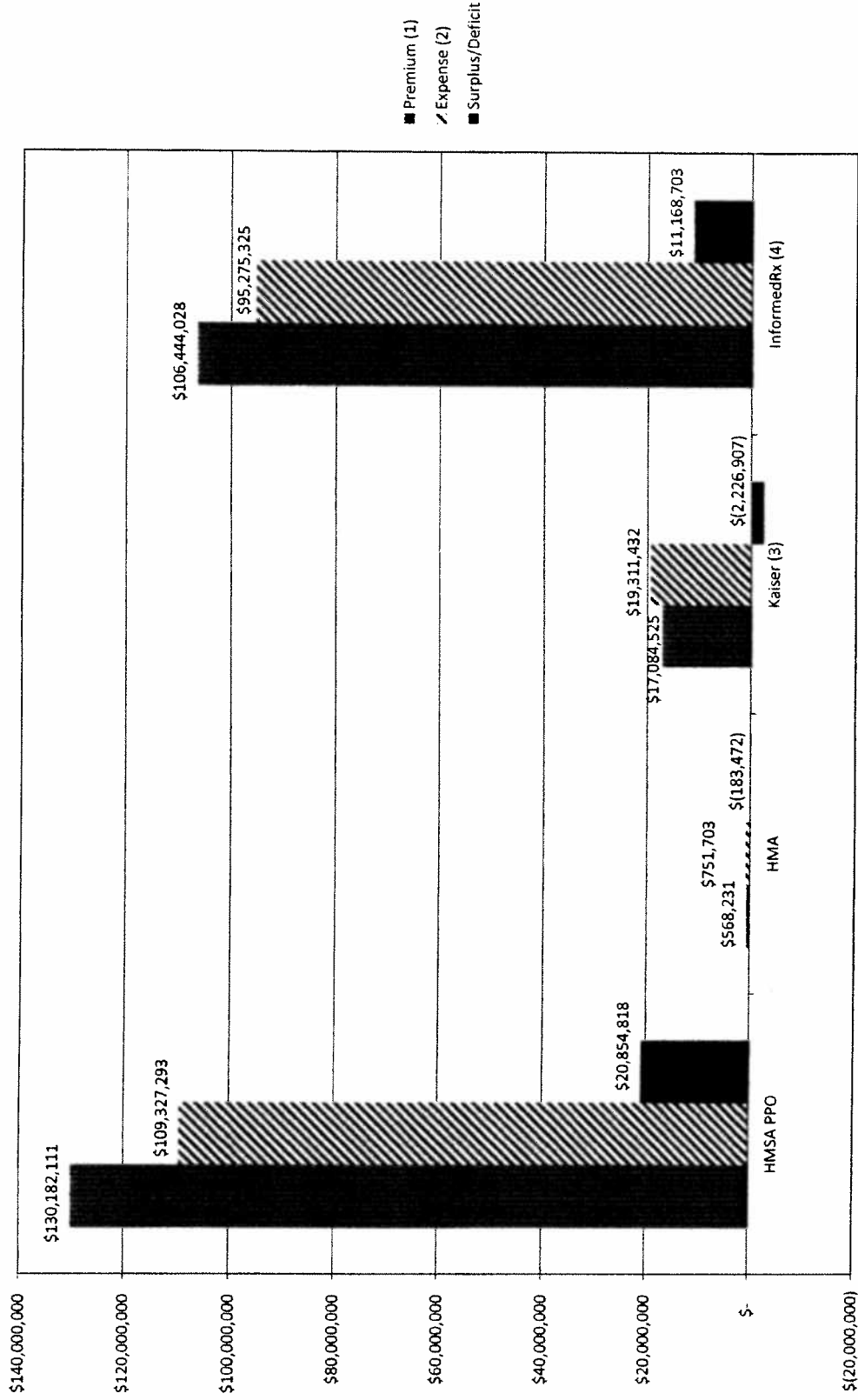
Hawaii Employer-Union Health Benefits Trust Fund
Annual Report as of June 30, 2011
HSTA VB Active HMSA Prescription Drug and Vision Plan Experience



Hawaii Employer-Union Health Benefits Trust Fund
 Annual Report as of June 30, 2011
 HSTA VB Active Medical and Prescription Drug Enrollment

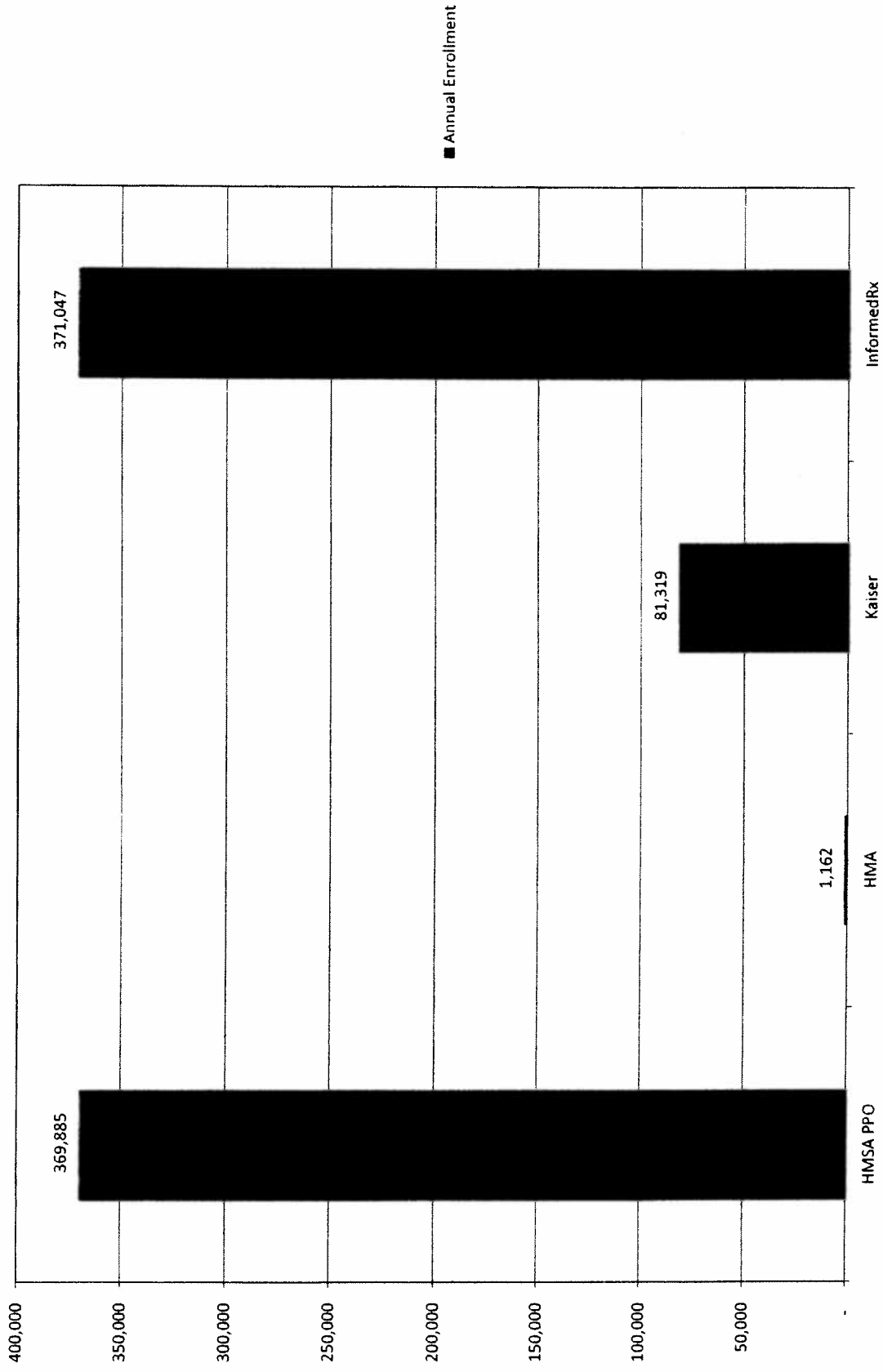


**Hawaii Employer-Union Health Benefits Trust Fund
Annual Report as of June 30, 2011
EUTF Retiree Medical and Prescription Drug Plan Experience**

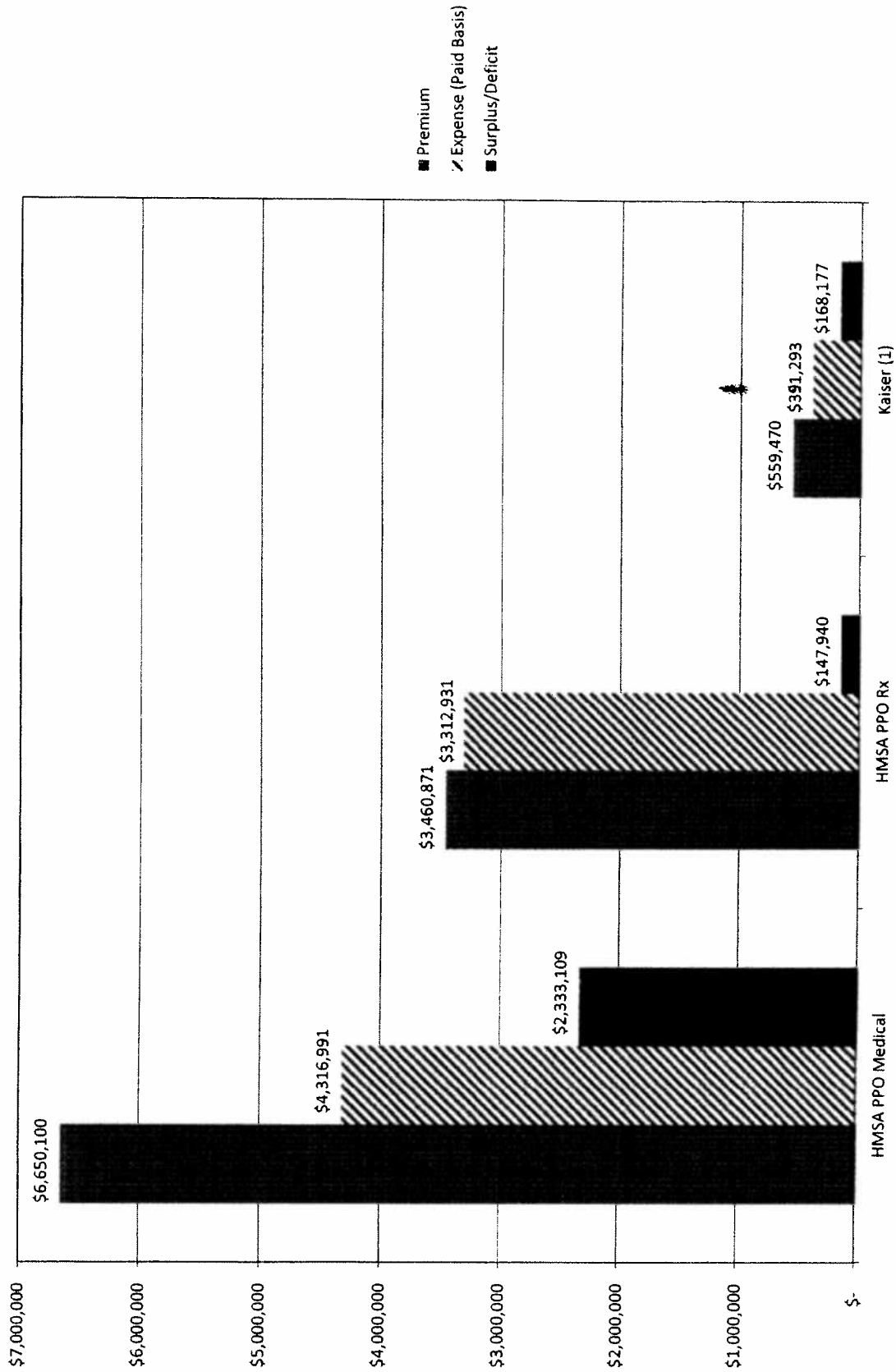


- (1) HMSA, HMA and InformedRx premium includes Employer and Employee contributions and is estimated based on monthly enrollment.
 (2) HMSA, HMA and InformedRx expenses are on an incurred basis. Kaiser expense is on a paid basis.
 (3) Includes HSTA VB Medicare retirees. Kaiser could not provide a separate report for this group because the population is too small for reporting purposes.
 (4) Does not include rebates.

Hawaii Employer-Union Health Benefits Trust Fund
 Annual Report as of June 30, 2011
 EUTF Retiree Medical and Prescription Drug Enrollment

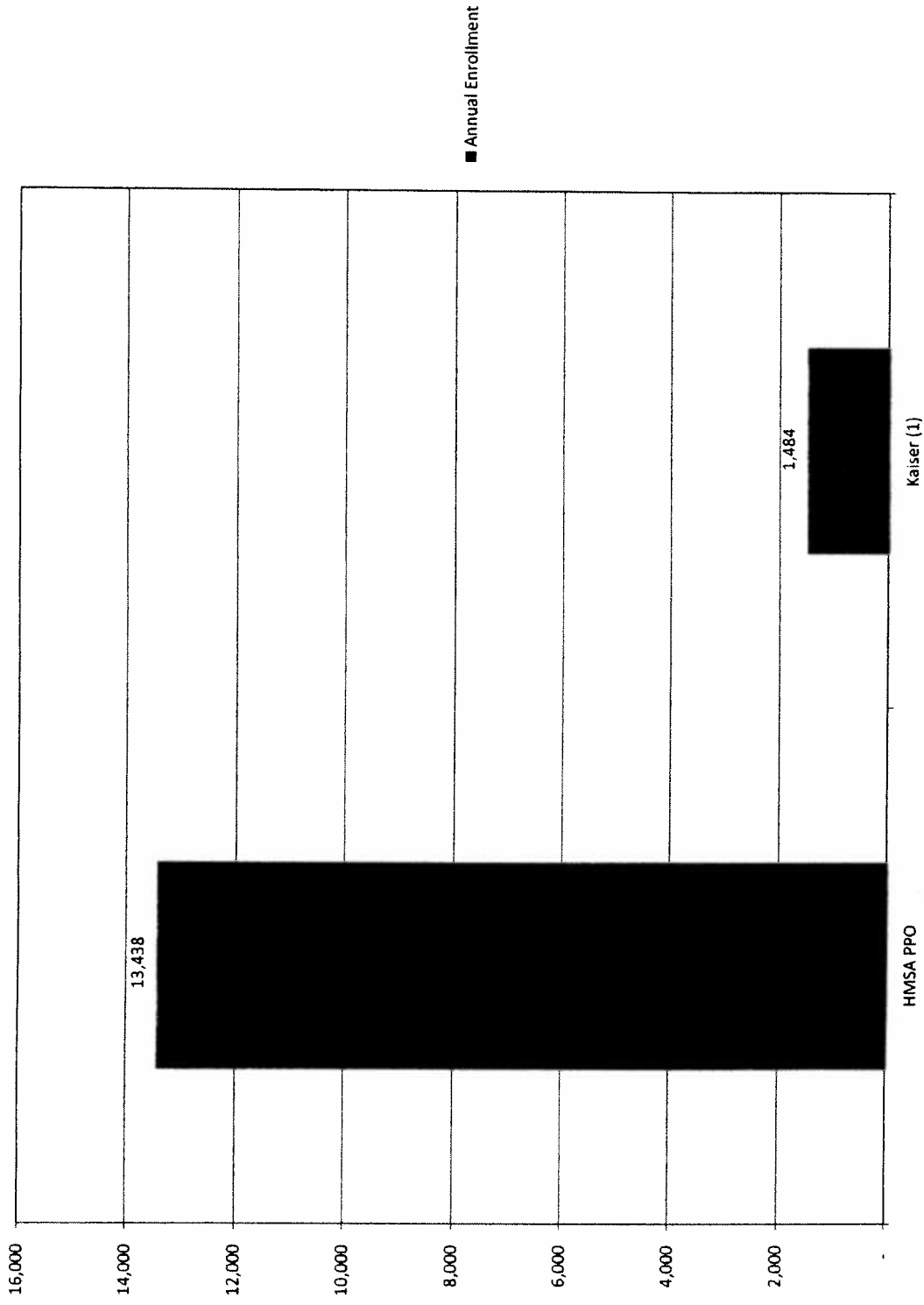


Hawaii Employer-Union Health Benefits Trust Fund
Annual Report as of June 30, 2011
HSTA VB Retiree Medical and Prescription Drug Plan Experience



(1) Does not include HSTA VB Medicare retirees.

**Hawaii Employer-Union Health Benefits Trust Fund
Annual Report as of June 30, 2011
HSTA VB Retiree Medical and Prescription Drug Enrollment**



(1) Does not include HSTA VB Medicare retirees.

**Hawaii Employer-Union Health Benefits Trust Fund
Annual Report as of June 30, 2011**

HDS Dental Benefit

	EUTF	HSTA	HSTA Supplemental Plan
<u>ACTIVES</u>			
Net Surplus / Deficit as of June 30, 2010	\$ (327,373)	N/A	N/A
Premiums		\$ 3,925,869	\$ 87,938
Total Premium Earned at 100%	\$ 32,844,086		
Retrospective Premium at 5%	1,626,689		
Premium Received at 95%	\$ 31,217,397		
Charges			
Dental Services Incurred	\$ 29,253,555	\$ 3,749,096	\$ 66,011
Administrative Expense	1,616,006	184,986	6,249
Total Charges	\$ 30,869,561	\$ 3,934,081	\$ 72,260
Net Surplus / Deficit	\$ 347,836	\$ (8,212)	\$ 15,678
Net Surplus / Deficit as of June 30, 2011	\$ 20,462	N/A	N/A
Total Enrollment	551,538	63,135	2,216
<u>RETIREEES</u>			
Net Surplus / Deficit as of June 30, 2010	\$ 552	N/A	N/A
Premiums		\$ 710,930	
Total Premium Earned at 100%	\$ 19,506,658		
Retrospective Premium at 5%	973,985		
Premium Received at 95%	\$ 18,532,672		
Charges			
Dental Services Incurred	\$ 17,879,482	\$ 756,516	
Administrative Expense	892,051	29,636	
Total Charges	\$ 18,771,533	\$ 786,152	
Net Surplus / Deficit	\$ (238,860)	\$ (75,222)	
Net Surplus / Deficit as of June 30, 2011	\$ (238,309)	N/A	
Total Enrollment	446,026	14,818	

Hawaii Employer-Union Health Benefits Trust Fund
Annual Report as of June 30, 2011

VSP Vision Benefit

	EUTF	HSTA
<u>ACTIVES</u>		
Premium Income - Contract (includes COBRA)	\$ 4,942,843	\$ 612,484
Premium Income - Billed (includes COBRA)	\$ 4,698,311	\$ 582,042
Expenses		
Claims paid by Month	\$ 4,292,768	\$ 454,544
Claims incurred 7/01/09 - 6/30/10, Paid 7/01/10 - 9/30/10 (3 months)	(177,806)	(18,827)
Claims incurred 7/01/10 - 6/30/11, Paid 7/01/11 - 9/30/11 (3 months)	242,045	25,629
Administrative Expense	375,865	46,563
Total Expense	\$ 4,732,872	\$ 507,909
Underwriting Surplus or Deficit - Contract	\$ 209,971	\$ 104,574
Underwriting Surplus or Deficit - Billed	\$ (34,561)	\$ 74,133
Total Enrollment	522,406	64,161
<u>RETIREEES</u> (Includes EUTF and HSTA combined)		
Premium Income - Contract (includes COBRA)	\$ 3,307,229	
Premium Income - Billed (includes COBRA)	\$ 3,142,088	
Premium Income - COBRA	\$ 4,413	
Expenses		
Claims paid by Month	\$ 2,938,502	
Claims incurred 7/01/09 - 6/30/10, Paid 7/01/10 - 9/30/10 (3 months)	(145,096)	
Claims incurred 7/01/10 - 6/30/11, Paid 7/01/11 - 9/30/11 (3 months)	159,041	
Administrative Expense	251,367	
Total Expense	\$ 3,203,814	
Underwriting Surplus or Deficit - Contract	\$ 103,415	
Underwriting Surplus or Deficit - Billed	\$ (61,726)	
Total Enrollment	469,781	

**Hawaii Employer-Union Health Benefits Trust Fund
Annual Report as of June 30, 2011**

Royal State Chiropractic Benefit

	EUTF	HSTA
<u>ACTIVES</u>		
Premium Income	\$ 1,072,971	\$ 141,567
Expenses		
Claims Incurred & Paid (Including Capitation Fees)	\$ 895,386	\$ 118,140
Incurred But Not Reported Claims	-	-
Retention	160,947	21,235
Total Expenses	\$ 1,056,333	\$ 139,375
Net Surplus / Deficit	\$ 16,638	\$ 2,192
Total Enrollment	501,748	64,977
<u>RETIREEES</u>		
Premium Income	N/A	\$ 27,572
Expenses		
Claims Incurred & Paid (Including Capitation Fees)		\$ 23,023
Incurred But Not Reported Claims		-
Retention		4,135
Total Expenses		\$ 27,158
Net Surplus / Deficit		\$ 414
Total Enrollment		14,900

Hawaii Employer-Union Health Benefits Trust Fund
Annual Report as of June 30, 2011

Standard Life Insurance Benefit

	EUTF	HSTA
<u>ACTIVES</u>		
Earned Premium	\$ 2,644,359	\$ 312,671
Paid Claims	\$ 2,738,049	\$ 66,000
Change in Reported Reserves	(43,930)	3,000
Change in IBNR Reserves	(1,362)	46,962
Conversion Charges	-	-
Total Incurred Claims	\$ 2,692,757	\$ 115,962
Premium Taxes	\$ 72,719	\$ 8,598
Administration Fee	-	-
Other Expenses and Risk Charges	289,074	34,597
Total Expenses and Risk Charges	\$ 361,793	\$ 43,195
Total Expense	\$ 3,054,550	\$ 159,157
Net Surplus / Deficit	\$ (410,191)	\$ 153,514
Total Enrollment	642,237	75,435
<u>RETIREEES</u>		
Earned Premium	\$ 1,655,881	\$ 62,817
Paid Claims	\$ 1,432,212	\$ 6,000
Change in Reported Reserves	(13,629)	3,000
Change in IBNR Reserves	2,050	9,429
Conversion Charges	4,100	-
Total Incurred Claims	\$ 1,424,733	\$ 18,429
Premium Taxes	\$ 45,537	\$ 1,727
Administration Fee	-	-
Other Expenses and Risk Charges	181,016	6,950
Total Expenses and Risk Charges	\$ 226,553	\$ 8,677
Total Expense	\$ 1,651,286	\$ 27,106
Net Surplus / Deficit	\$ 4,595	\$ 35,711
Total Enrollment	402,282	15,261

APPENDIX B

OFFER FORM OF-1

APPENDIX B
OFFER FORM OF-1

Organization Name: _____

Location of Home Office: _____

Location of Honolulu Office (if any): _____

Primary Contact: _____

Address: _____

City/State/Zip: _____

Telephone: _____ FAX: _____

The undersigned proposes to offer insurance broker services of the Hawaii Employer-Union Health Benefit Trust Fund's ("EUTF") as set forth in this proposal, all in strict compliance with the specifications, terms, and conditions set forth in Request for Proposal No. 12-001 ("RFP"), and any modifications, amendments, and addenda issued to that RFP.

The undersigned states that he or she has carefully read and understands the terms and conditions of the proposed contract and agrees that the EUTF reserves the right to cancel the RFP, or reject any or all proposals, or waive any defects when, in their opinion, such is in the best interest of the EUTF and State of Hawaii.

The undersigned certifies that this proposal is not in violation of Section 84-15, Hawaii Revised Statutes, concerning prohibited State contracts, and is certifying that the price(s) submitted was (were) independently arrived at without collusion.

The undersigned represents: **(Check ☒ one only)**

- ☐ **A Hawaii business** incorporated or organized under the laws of the State of Hawaii;
OR
☐ **A compliant Non-Hawaii business** not incorporated or organized under the laws of the State of Hawaii, but registered at the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division to do business in the State of Hawaii.

State of incorporation: _____

Offeror is:

- ☐ Sole Proprietor ☐ Partnership ☐ Corporation ☐ Joint Venture
☐ Other _____

Federal I.D. No.: _____

Hawaii General Excise Tax License I.D. No.: _____

Payment address (other than street address below): _____

City, State, Zip Code: _____

Business address (street address): _____

City, State, Zip Code: _____

Respectfully Submitted:

*Authorized Original Signature: _____

Name and Title (Please Type or Print): _____

**Exact Legal Name of Company (Offeror): _____

Date: _____

*Please attach to this page notarized evidence of the authority of this officer to submit a proposal on behalf of your organization.

**If Offeror is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed.

APPENDIX C

CURRENT INSURANCE POLICIES

STABILITY & STRENGTH

▶ *Bind our Promise*

As you guide your insureds to purchase our insurance, RLI knows financial strength is at the core of that decision. We believe our strength and stability to be the proof that our promises will be fulfilled when called upon. **INSURANCE IS INDEED A PROMISE.**

The ratings reflect RLI's superior capitalization, outstanding long-term operating profitability and the financial flexibility afforded by RLI Corp. As an accomplished "niche" underwriting company, RLI has been able to maintain its strong operating results through focusing on markets considered underserved, withstanding the vagaries of different stages of the market cycle.

— A.M. Best (May 2009)



RLI®

DIFFERENT WORKS
www.rllcorp.com

- ▶ Rated A+ (Superior) and XI by A.M. Best for financial strength and financial size respectively.
- ▶ Rated A+ by Standard and Poor's.
- ▶ Named to Ward's Top 50 for over 20 consecutive years (one of only four companies to be recognized every year since the list's inception).
- ▶ RLI has paid increased dividends in each of the last 36 years.
- ▶ RLI's balance sheet is strong.

Financial Products Policy Declarations



RLI Insurance Company
9025 North Lindbergh Drive
Peoria, Illinois 61615
Phone: (309) 692-1000

A stock insurance company,
herein called the Company.

THE DIRECTORS, OFFICERS, AND CORPORATE SECURITIES LIABILITY, FIDUCIARY LIABILITY, EMPLOYMENT PRACTICES LIABILITY, PROFESSIONAL LIABILITY, PRIVATE EQUITY INVESTMENT SERVICES AND EXECUTIVE LIABILITY, AND PRIVATE COMPANY DIRECTORS, OFFICERS, AND CORPORATE LIABILITY COVERAGE SECTIONS (WHICHEVER ARE APPLICABLE) ARE ALL WRITTEN ON A CLAIMS MADE BASIS. EXCEPT AS OTHERWISE PROVIDED, THESE COVERAGE SECTIONS COVER ONLY CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD. PLEASE READ CAREFULLY.

Policy No. EPG0011250

Item 1. **Parent Company** (name and address):

Hawaii Employer-Union Health Benefits Trust Fund
201 Merchant Street, Suite 1520
Honolulu, HI 96813

Item 2. **Policy Period:**

From 12:01 A.M. on December 15, 2011
To 12:01 A.M. December 15, 2012
Local time at the address shown in Item 1.

Item 3. Coverage Summary

<u>Description:</u>	<u>Granted:</u>
• Directors, Officers, and Corporate Securities Liability Coverage	No
• Fiduciary Liability Coverage	Yes
• Crime Coverage	No
• Kidnap/Ransom and Extortion Coverage	No
• Employment Practices Liability Coverage	No
• Professional Liability Coverage	No
• Private Equity Investment Services and Executive Liability Coverage	No
• Private Company Directors, Officers, and Corporate Liability Coverage	No

Item 4. Termination of Prior Policies: EPG0011096

Item 5. Endorsements Effective at Inception:

FPP 906 (04/05), MAN-SCR-139(12/11), MAN-SCR-140(12/11)

Date: January 9, 2012

Authorized Company Representative

RLI Insurance Company
(herein called the "Insurer")

Financial Products Policy

General Terms and Conditions

Terms and Conditions

1. Except for the **General Terms and Conditions** or unless stated to the contrary in any coverage section, the terms and conditions of each coverage section of this Policy apply only to that section and shall not be construed to apply to any other coverage section of this Policy. Any defined term referenced in these **General Terms and Conditions** but defined in a coverage section shall, for purposes of coverage under that coverage section, have the meaning set forth in that coverage section.

Definitions

2. When used in this Policy:

"Parent Company" means the company named in Item 1. of the Declarations, including any such organization as a debtor in possession under the United States bankruptcy law or an equivalent status under the law of any other country.

"Policy Period" means the period of time specified in Item 2. of the Declarations of this Policy, subject to prior cancellation or termination. If this period is less than or greater than one (1) year, then the Limits of Liability specified in the Declarations for each coverage section shall be the Insurer's maximum limit of liability under such coverage section for the entire period.

Worldwide Territory

3. Coverage under this Policy shall extend anywhere in the world.

Valuation and Foreign Currency

4. All premiums, limits, retentions/deductibles, loss and other amounts under this Policy are expressed and payable in the currency of the United States of America. Except as otherwise provided in any coverage section, if judgment is rendered, settlement is denominated or another element of loss under this Policy is stated in a currency other than United States of America dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in The Wall Street Journal on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of loss is due, respectively.

Limits of Liability and Retention/Deductible Amounts

5. Unless stated to the contrary in any coverage section, the limits of liability and retention/deductible amount(s) shown for each coverage section of this Policy are separate limits of liability and separate retention/deductible amount(s) pertaining to the coverage section for which they are shown; the application of a retention/deductible amount to a loss under one coverage section of this Policy shall not reduce the retention/deductible amount under any other coverage section of this Policy.

Notice and Authorization

6. All notices under any coverage section of this Policy shall be in writing and given by prepaid express courier, certified mail or fax properly addressed to the appropriate party.

Notice to any Insureds may be given to the **Parent Company** at the address as shown in Item 1. of the Declarations. It is agreed the **Parent Company** shall act on behalf of all Insureds with respect to the giving and receiving of notice of Claim or loss, cancellation or termination, the payment of premiums and the receiving of any return premiums that may become due under this Policy, the negotiation, agreement to and acceptance of any endorsements issued to form a part of this Policy, and the exercising or declining to exercise any right to a Discovery Period.

Notice to the Insurer of any Claim under any coverage section of this Policy shall be given to:

RLI Insurance Company
9025 North Lindbergh Drive
Peoria, Illinois 61615-1431
Attention: Claims Department

All other notices to the Insurer under any coverage section of this Policy shall be given to the same addressee but to the attention of the Underwriting Department. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier.

Action Against the Insurer

7. No action shall lie against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, nor until the amount of the Insureds' obligation to pay shall have been finally determined either by judgment against the Insureds after actual trial or by written agreement of the Insureds, the claimant and the Insurer.

No person or organization shall have any right under this Policy to join the Insurer as a party to any action against the Insureds to determine the Insureds' liability, nor shall the Insurer be impleaded by the Insureds or their legal representatives. Bankruptcy or insolvency of the Insureds or of the estate of an Insured shall not relieve the Insurer of any of its obligations hereunder.

Only if requested by the Insureds, the Insurer shall submit any dispute, controversy or claim arising out of or relating to this Policy or the breach, termination or invalidity thereof to final and binding arbitration pursuant to such rules and procedures as the parties may agree. If the parties cannot so agree the arbitration shall be administered by the American Arbitration Association in accordance with its then prevailing commercial arbitration rules. The arbitration panel shall consist of one arbitrator selected by the Insureds, one arbitrator selected by the Insurer, and a third independent arbitrator selected by the first two arbitrators. In any such arbitration, each party will bear its own legal fees and expenses.

Cancellation and Nonrenewal

8. This Policy or any coverage section shall terminate at the earliest of the following times:
- a) the effective date of termination specified in a prior written notice by the **Parent Company** to the Insurer, provided neither this Policy nor any coverage section may be terminated by the **Parent Company** if the **Policy Period** is more than eighteen (18) months,
 - b) ten (10) days after the receipt by the **Parent Company** of a written notice of termination from the Insurer based upon failure to pay premium due, unless such premium is received by the Insurer prior to such tenth (10th) date,
 - c) at such other time as may be agreed upon by the Insurer and the **Parent Company**, or
 - d) upon expiration of the **Policy Period** as set forth in Item 2. of the Declarations of this Policy.

The Insurer shall refund the unearned premium computed at customary short rates if this Policy is terminated by the **Parent Company**. Under any other circumstances the refund shall be computed pro rata. Payment or tender of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable. If the **Policy Period** is more than eighteen (18) months, the premium charged for this Policy shall be fully earned at inception of the **Policy Period**.

The Insurer shall not be required to renew this Policy upon its expiration.

Other Insurance

9. If any Loss is insured under any other valid policy(ies), prior or current, then this Policy shall cover such Loss, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such Loss is in excess of the amount of payment from such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided in this Policy. This Policy will not be subject to the terms of any other insurance.

Assignment

10. This Policy and any and all rights hereunder are not assignable without the written consent of the Insurer.

Termination of Prior Bonds or Policies

11. Any Bonds or Policies issued by the Insurer or its affiliates and specified in Item 4. of the Declarations of this Policy shall terminate, if not already terminated, as of the inception date of this Policy. Such prior Bonds or Policies shall not cover any loss under the Crime or Kidnap/Ransom and Extortion coverage sections not discovered and notified to the Insurer prior to the inception date of this Policy.

Investigation and Settlement

12. The Insurer may make any investigation it deems necessary and may, with the written consent of the Insured, make any settlement of a Claim it deems expedient.

If the Insurer has the right and duty to defend any Claim, the Insurer may, with the written consent of the Insureds, make any settlement of a Claim the Insurer deems expedient. If the Insureds withhold consent to such settlement, the Insurer's liability for all Loss on account of such Claim shall not exceed the amount for which the Insurer could have settled such Claim plus Defense Expenses accrued as of the date such settlement was proposed in writing by the Insurer to the Insured.

Subrogation

13. In the event of any payment under this Policy, the Insurer shall be subrogated to the extent of such payment to all the Insureds' rights of recovery. The Insured shall execute and deliver all instruments and papers and do whatever else is necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Insurer effectively to bring suit in the name of the Insured.

Changes

14. The terms and conditions of this Policy shall not be waived or changed, except by endorsement issued to form a part of this Policy.

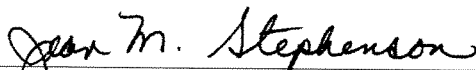
Headings

15. The descriptions in the headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

Entire Agreement

16. The Insureds agree this Policy, including the Application and any endorsements, constitutes the entire agreement between the Insureds and the Insurer or any of its agents relating to this insurance.

In witness whereof, the Insurer issuing this Policy has caused this Policy to be signed by its authorized officers, but it shall not be valid unless also signed by a duly authorized representative of the Company.


Corporate Secretary


President & COO

Financial Products Policy

Coverage Section: **General Terms and Conditions**

Insurer: **RLI Insurance Company**

Effective Date of
this Endorsement: **December 15, 2011**

To be attached to and form part of
Policy No. **EPG0011250**

Issued to: **Hawaii Employer-Union Health Benefits Trust Fund**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMEND OTHER INSURANCE PROVISION

It is hereby understood and agreed that Subsection 9., **Other Insurance** is amended to read as follows:

9. If any Loss is insured under any other valid and collectible policy(ies), prior or current, then this Policy shall cover such Loss, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such Loss is in excess of the amount of payment from such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided in this Policy. This Policy will not be subject to the terms of any other insurance.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

Financial Products Policy

Coverage Section: **General Terms and Conditions**

Insurer: **RLI Insurance Company**

Effective Date of
this Endorsement: **December 15, 2011**

To be attached to and form part of
Policy No. **EPG0011250**

Issued to: **Hawaii Employer-Union Health Benefits Trust Fund**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMEND SUBROGATION CLAUSE

It is hereby understood and agreed that Subsection 13., **SUBROGATION** is amended to add the following:

13. In no event, however, shall the Insurer exercise its rights of subrogation against an Insured Person under this Policy unless there has been a final adjudication against such Insured Person establishing a fraudulent or criminal act.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

Financial Products Policy

Coverage Section: **General Terms and Conditions**

Insurer: **RLI Insurance Company**

Effective date of
this endorsement: **December 15, 2011**

To be attached to and form part of
Policy No. **EPG0011250**

Issued to: **Hawaii Employer-Union Health Benefits Trust Fund**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DELETE INVESTIGATION AND SETTLEMENT ENDORSEMENT

It is hereby understood and agreed that **Investigation and Settlement**, Subsection 12., is deleted in its entirety.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Fiduciary Liability Coverage Section Declarations

RLI[®]

RLI Insurance Company
9025 North Lindbergh Drive
Peoria, Illinois 61615
Phone: (309) 692-1000

A stock insurance company,
herein called the Company.

Policy No. EPG0011250

Item 1. Parent Company:

Hawaii Employer-Union Health Benefits Trust Fund
201 Merchant Street, Suite 1520
Honolulu, HI 96813

Item 2. Limit of Liability (inclusive of Defense Expenses):

(a) Aggregate Limit of Liability:	\$ 10,000,000
(b) Insuring Clause 2 Sublimit:	\$ 100,000

Item 3. Solely with respect to each Claim other than a Securities Claim, the Retention for Indemnifiable Loss is:	\$ 75,000
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Item 4. Solely with respect to each Securities Claim, the Retention for Indemnifiable Loss is:	\$ 0
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Premium:	\$ 55,125
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Item 5. Entity:

Hawaii Employer-Union Health Benefits Trust Fund

Item 6. Discovery Period:

(a) Discovery Period Premium:	\$ 55,125
(b) Discovery Period:	One Year

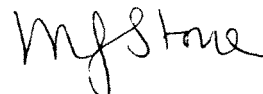
Item 7. Prior or Pending Date:	April 1, 2002
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Item 8. Duty to Defend Coverage:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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Item 9. Endorsements Effective at Inception:

MAN-SCR-142(12/11), MAN-SCR-143(12/11), MAN-SCR-144(12/11), MAN-SCR-145(12/11), MAN-SCR-146(12/11),
MAN-SCR-147(12/11), MAN-SCR-148(12/11), MAN-SCR-149(12/11), MAN-SCR-150(12/11), MAN-SCR-151(12/11),
MAN-SCR-152(12/11), MAN-SCR-153(12/11), MAN-SCR-192(01/12)

Date: January 9, 2012



Authorized Company Representative

RLI Insurance Company

Fiduciary Liability Coverage Section

In consideration of the payment of the premium, and in reliance upon the statements made to the Insurer in the Application forming a part hereof and its attachments and the material incorporated therein, RLI Insurance Company, herein called the "Insurer," and the Insureds agree as follows:

INSURING CLAUSES

1. The Insurer will pay on behalf of the **Insureds**, **Loss** which the **Insureds** are legally obligated to pay as a result of **Claims** first made during the **Policy Period**, or during the Discovery Period (if purchased), against the **Insureds** for a **Wrongful Act** by the **Insureds** or by any natural person for whose **Wrongful Act** the **Insureds** are legally responsible.
2. The Insurer shall pay on behalf of the **Insureds** any **Voluntary Settlement** and **Defense Expenses** which the **Insureds** are legally obligated to pay as a result of a **Settlement Program Notice** first given to the Insurer during the **Policy Period**, provided such **Voluntary Settlement** and **Defense Expenses** are incurred after such **Settlement Program Notice** is first given to the Insurer.

DEFINITIONS

3. When used in this coverage section:

"Administration" means one or more of the following administrative duties or activities, but only with respect to an **Insured Plan**:

- a. counseling employees, participants and beneficiaries; or
- b. providing interpretations; or
- c. affecting enrollment, termination or cancellation of employees, participants and beneficiaries; or
- d. handling of records.

"Claim" means:

- a. a written demand for monetary, non-monetary or injunctive relief against any **Insured**;
- b. a civil, criminal or arbitration proceeding against any **Insured** commenced by the service of a complaint or similar pleading, a return of an indictment, information or similar document, or a demand for arbitration;
- c. a formal civil administrative or civil regulatory proceeding against any **Insured** commenced by the filing of a notice of charges, or similar document, or by the entry of a formal investigative order or similar document;
- d. a written notice of the commencement of a fact-finding investigation by the United States Department of Labor, the Pension Benefit Guaranty Corporation or similar governmental authority which is located outside of the United States, including, but not limited to, the Pensions Ombudsman appointed by the United Kingdom Secretary of State for Social Services or the United Kingdom Occupational Pensions Regulatory Authority; or
- e. a written request received by an **Insured** to toll or waive a statute of limitations relating to a potential **Claim** described in a. through d. above;

including any appeal thereof.

Solely for purposes of coverage under Insuring Clause 2., **Claim** means a **Settlement Program Notice**.

"**Clean Up Costs**" means expenses, including, but not limited to, legal and professional fees, incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**.

"**Defense Expenses**" means reasonable and necessary fees, charges and expenses (including without limitation attorneys' fees and experts' fees and the premium for any appeal, attachment or similar bond, provided that the Insurer has no obligation to apply for, furnish or secure any such bond) incurred in the defense or appeal of a **Claim** after notice of such **Claim** is given to the Insurer. **Defense Expenses** shall not include salaries, fees, regular or overtime wages, overhead or benefit expenses of any trustee, director, officer or employee of the **Entity** or **Insured Plan**.

"**Employee Benefit Law**" means **ERISA** or any similar common or statutory law anywhere in the world to which an **Insured Plan** is subject (including without limitation the English Pension Scheme Act 1993 and the English Pension Act 1995, all as amended), and any rules and regulations promulgated thereunder. Except with respect to any **Wrongful Act** described in item c. of the definition of **Wrongful Act**, **Employee Benefit Law** shall not include any law concerning workers' compensation, unemployment insurance, Social Security, government-mandated disability benefits or similar law.

"**Entity**" means the organization(s) designated in Item 5. of the Declarations for this coverage section.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, including, but not limited to, amendments thereto by the Consolidated Omnibus Budget Reconciliation Act of 1985, the Health Insurance Portability and Accountability Act of 1996 as it relates to sections 102(b) and 104(b)(1) of **ERISA**, the Newborns' and Mothers' Health Protection Act of 1996, the Mental Health Parity Act of 1996, and the Women's Health and Cancer Rights Act of 1998, all as amended.

"**ESOP**" means any employee stock ownership plan as defined in an **Employee Benefit Law**, or any other employee welfare benefit plan or employee pension plan under which investments are made primarily in securities of the **Entity**, or whose assets at the inception date of this coverage section were comprised of twenty percent (20%) or more of securities of the **Entity**.

"**Fiduciary**" means a fiduciary (as defined in an **Employee Benefit Law**) of an **Insured Plan**, or a person or organization who exercises discretionary control with respect to the management of an **Insured Plan** or the disposition of its assets.

"**Financial Impairment**" means the status of the **Entity** resulting from the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Entity**, or the **Entity** becoming a debtor in possession under the United States bankruptcy law or the equivalent of a debtor in possession under the law of any other country.

"**Insured**," either in the singular or plural, means:

- a. the **Entity**;
- b. the **Insured Plan(s)**;
- c. the **Insured Person(s)**; and
- d. any other organization, plan or natural person added by specific written endorsement to this coverage section.

"**Insured Person**," either in the singular or plural, means:

- a. any natural persons who were, now are, or shall become duly elected or appointed trustees (excluding bankruptcy trustees), directors, officers, general counsel, governors, general partners, management committee members, member of the board of managers, or employees of the **Entity** or of any **Insured Plan**, in his or her capacity as a **Fiduciary** or trustee of an **Insured Plan** or as a person performing **Administration** of an **Insured Plan**;
- b. any natural persons who were, now are or shall become a holder of a title, position or capacity comparable or equivalent to a position described in a. above of any **Entity** chartered in any jurisdiction outside of the United States of America, in his or her capacity as a **Fiduciary** or trustee of an **Insured Plan** or as a person performing **Administration** of an **Insured Plan**; and
- c. any other natural person who was, now is, or shall become a **Fiduciary** of an **Insured Plan** and is added by specific written endorsement to this coverage section.

In the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** against the estate, heir, legal representative or assign of such **Insured Person**, or against a trust which holds assets contributed by such **Insured Person** identified above, for a **Wrongful Act** of such **Insured Person** will be deemed to be a **Claim** against such **Insured Person**.

"**Insured Plan**," either in the singular or plural, means:

- a. any employee benefit plan, as defined by **Employee Benefit Law** (including without limitation any plan from which participants may choose among two or more benefits consisting of cash and qualified benefits, and any cafeteria plan, dependent care assistance program, and fringe benefit and voluntary employees' beneficiary association as defined in sections 125, 129, 132 and 501(c)(9) of the U.S. Internal Revenue Code of 1986, as amended) other than any **ESOP**, which is operated solely by the **Entity** or jointly by the **Entity** and a labor organization solely for the benefit of any natural persons who were, now are, or shall become employees, directors, officers, governors, management committee members, members of the board of managers or general partners of the **Entity** located anywhere in the world, if such plan existed as of the inception date of the **Policy Period** or is afforded coverage pursuant to subsection 10. of this coverage section;
- b. any other employee benefit plan not subject to Title 1 of **ERISA** sponsored solely by the **Entity** for the benefit of any natural persons who were, now are, or shall become employees, directors, officers, governors, management committee members, members of the board of managers or general partners of the **Entity** located anywhere in the world, if such plan existed as of the inception date of the **Policy Period** or is afforded coverage pursuant to subsection 10. of this coverage section;
- c. any other plan or program otherwise described in items a. or b. above while such plan or program is being actively developed, formed or proposed by the **Entity** prior to the formal creation of such plan or program; provided, however, no coverage is afforded under this coverage section for any **Claim** against an **Insured** in a settlor capacity with respect to any plan or program;
- d. any government-mandated insurance for workers' compensation, unemployment, Social Security or disability benefits for employees of the **Entity**, but solely for a **Wrongful Act** as defined in item c. of the definition of **Wrongful Act**; or
- e. any other plan, fund, trust or program specifically included in the definition of **Insured Plan** pursuant to an endorsement to this coverage section.

Provided, however, **Insured Plan** shall not include any multiemployer plan as defined in any **Employee Benefit Law**.

"**Loss**" means damages, judgments (including pre/post-judgment interest on a covered judgment), settlements, including, but not limited to, punitive, exemplary or multiple damages where insurable under applicable law, and **Defense Expenses** which the **Insureds** are legally obligated to pay as a result of a covered **Claim** under Insuring Clause 1.

The law of the jurisdiction most favorable to the insurability of those punitive, exemplary or multiple damages shall control whether such damages are insurable, provided that such jurisdiction is where:

- a. those damages were awarded or imposed;
- b. any **Wrongful Act** occurred for which such damages were awarded or imposed;
- c. the **Entity** is incorporated or has its principal place of business; or
- d. the Insurer is incorporated or has its principal place of business.

Loss under Insuring Clause 1. shall not include the following, other than covered **Defense Expenses** attributable thereto:

- (i) civil or criminal fines or penalties imposed by law, except (1) the five percent (5%) or less, or the twenty percent (20%) or less, civil penalties imposed upon an **Insured** as a **Fiduciary** under Section 502(i) or (l), respectively, of **ERISA**, (2) civil penalties imposed by the Pension Ombudsman appointed by the United Kingdom Secretary of State for Social Services or by the United Kingdom Occupational Pensions Regulatory Authority, pursuant to the English Pension Scheme Act 1993, the English Pensions Act 1995, or rules or regulations thereunder; provided any coverage for such civil penalties is subject to the other terms, conditions and exclusions of this coverage section and applies only if the funds or assets of the subject **Insured Plan** are not used to fund, pay or reimburse the premium for this coverage section, or (3) any civil money penalties imposed upon an **Insured** for violation of the privacy provisions of the Health Insurance Portability and Accountability Act ("HIPAA"); provided the Company's maximum aggregate liability for all such HIPAA civil money penalties on account of all **Claims** first made during the **Policy Period** shall be \$25,000, which is a sublimit that further limits and does not increase the Insurer's maximum liability under this coverage section;

- (ii) taxes or tax penalties;
- (iii) fees, costs or expenses to amend, restructure, administer or terminate an **Insured Plan** or any remedial fees, costs, expenses or other remedial payment(s);
- (iv) stock options;
- (v) any amount for which an **Insured** is not financially liable or which is without legal recourse to the **Insured**;
- (vi) matters uninsurable under the law pursuant to which this coverage section shall be construed, except as provided above.

Solely for purposes of coverage under Insuring Clause 2., **Loss** means a **Voluntary Settlement** and **Defense Expenses**.

"Pollutants" means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by the United States Environmental Protection Agency or any state, county, municipal or local counterpart thereof or any foreign equivalent. Such substances shall include, but not be limited to, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, noise, fungus (including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi, but does not include any fungi intended by the **Insured** for consumption) and electric or magnetic or electromagnetic fields.

"Related Claims" means all **Claims** for **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

"Securities Claim" means a **Claim** which in whole or in part is based upon, arises out of, directly or indirectly results from, or is in consequence of any actual or alleged purchase or sale, or failure to purchase or sell, any securities issued by the **Entity** or any actual or alleged misrepresentation or omission of information in connection with such securities.

"Settlement Program" means any voluntary compliance program or similar voluntary settlement program administered by the United States Internal Revenue Service, United States Department of Labor or any other domestic or foreign governmental authority. Such programs include, without limitation, the Employee Plans Compliance Resolution System, Audit Closing Agreement Program, Voluntary Compliance Resolution Program, Walk-in Closing Agreement Program, Administrative Policy Regarding Self-Correction, Tax Sheltered Annuity Voluntary Correspondence Program, Delinquent Filer Voluntary Compliance Program, and Voluntary Fiduciary Correction Program.

"Settlement Program Notice" means prior written notice to the Insurer by any **Insured** of the **Insured's** intent to enter a **Settlement Program**.

"Subsidiary" means any:

- a. for-profit organization; or
- b. any not-for-profit organization which is sponsored exclusively by the **Entity**;

with respect to which the **Entity**, on or before the inception date of this coverage section, either directly or indirectly through one or more of its **Subsidiaries**, owns or controls by reason of stock ownership, a written agreement, by-laws, charter or similar document the present right to select more than fifty percent (50%) of the directors, trustees, governors, general partners, or members of the management committee or board of managers of the organization.

Subject to subsection 10. of this coverage section, coverage afforded under this coverage section with respect to **Claims** made against a **Subsidiary** or any **Insured Person** or **Insured Plan** thereof shall only apply for **Wrongful Acts** committed or allegedly committed after the effective time such **Subsidiary** became a **Subsidiary** and prior to the time such **Subsidiary** ceased to be a **Subsidiary**.

"Voluntary Settlement " means any fees, fines, penalties or sanctions paid or agreed to be paid by an **Insured** to a governmental authority pursuant to a **Settlement Program** for the actual or alleged inadvertent non-compliance by an **Insured Plan** with any statute, rule or regulation; provided **Voluntary Settlement** shall not include (i) any costs to correct the non-compliance, or any other charges, expenses, taxes or damages; or (ii) any fees, fines, penalties or sanctions relating to an **Insured Plan** which, as of the earlier of the inception date of this coverage section or the inception date of the first policy in an uninterrupted series of policies issued by the Insurer of which this coverage section is a direct or indirect renewal or replacement, any **Insured Person** knew to be actually or allegedly non-compliant.

"Wrongful Act" means:

- a. any actual or alleged breach of the responsibilities, obligations or duties imposed upon **Fiduciaries** of any **Insured Plan** by any **Employee Benefit Law** or by the common or statutory law of the United States or any state or other jurisdiction anywhere in the world;
- b. any other matter claimed against any **Insured** solely by reason of his, her or its status as a **Fiduciary**, the **Insured Plan**, or the **Entity**, but solely with respect to an **Insured Plan**;
- c. any act, error or omission actually or allegedly committed or attempted solely in the **Administration** of any **Insured Plan**; and
- d. solely with respect to an **Insured Person**, any matter claimed against him or her arising out of his or her service as a **Fiduciary** or in the **Administration** of any multiemployer plan as defined in an **Employee Benefit Law**, but only if such service is at the specific written request or direction of the **Entity** and such multiemployer plan is added by specific written endorsement to this coverage section, identified as a multiemployer plan and any required premium is paid. In no event shall coverage under this coverage section extend to a **Claim** against a multiemployer plan itself, its contributing employer(s), or any other fiduciaries or administrators of such plan, other than an **Insured Person**.

The foregoing definitions shall apply equally to the singular and plural forms of the respective words.

EXCLUSIONS

4. The Insurer shall not be liable for **Loss** on account of any **Claim** made against any **Insured**:
 - a. for the failure to collect contributions owed to an **Insured Plan** or the failure to fund an **Insured Plan** in accordance with any **Employee Benefit Law** or the **Insured Plan** instrument; however, this exclusion shall not apply to **Defense Expenses** or to the extent such failure is attributable solely to the **Insured's** negligence;
 - b. for bodily injury, sickness, disease, death, mental anguish or emotional distress of any person, or damage to or destruction of any tangible property, including the loss of use thereof; however, this exclusion shall not apply to **Defense Expenses** incurred in the defense of a **Claim** for violation of the responsibilities, obligations or duties imposed upon an **Insured** as a **Fiduciary** under **Employee Benefit Law**;
 - c. for discrimination in violation of any law other than any **Employee Benefit Law**; or
 - d. for an actual or alleged obligation of any **Insured** under any law governing workers compensation, unemployment insurance, social security, disability benefits or similar law, except the Consolidated Omnibus Budget Reconciliation Act of 1985 or the Health Insurance Portability and Accountability Act of 1996, all as amended.
5. The Insurer shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any of the **Insureds** based upon, arising out of, directly or indirectly resulting from, or in consequence of:
 - a. liability of others assumed by the **Insureds** under any contract or agreement; however, this exclusion shall not apply: (i) to **Defense Expenses**; and (ii) to the extent that liability would have attached to the **Insured** in the absence of such contract or agreement, or (iii) to the extent the liability was assumed in accordance with or under the **Insured Plan's** declaration of trust or equivalent document pursuant to which the **Insured Plan** was established;
 - b. any fact, circumstance, situation, transaction, event or **Wrongful Act** which was the subject of any notice given under any prior policy or coverage section for fiduciary liability or other similar insurance;

- c. the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or any direction or request that any **Insured** test for, monitor, clean up, remove, contain, treat, neutralize, detoxify or assess **Pollutants**, or any voluntary decision to do so; however, this exclusion shall not apply to (i) **Loss**, other than **Clean Up Costs**, incurred by **Insured Persons** if and to the extent the **Entity** does not indemnify the **Insured Persons** for such **Loss** either because the **Entity** is neither permitted nor required to grant such indemnification or because of the **Financial Impairment** of the **Entity**, or (ii) any **Claim** by or on behalf of a beneficiary of or participant in an **Insured Plan** based upon, arising out of, directly or indirectly resulting from, or in consequence of the diminution in value of any securities which are owned by the **Insured Plan** and which are in any organization other than the **Entity**, if such diminution in value is allegedly as a result of the matters described in this exclusion;
 - d. any litigation or administrative or regulatory proceeding against any **Insured** pending on or before the Prior or Pending Date set forth in Item 7. of the Declarations for this coverage section, or any actual or alleged fact, circumstance, situation, transaction, event or the same or substantially the same **Wrongful Act** underlying or alleged therein;
 - e. any **Wrongful Act** committed or allegedly committed by any **Insured** with respect to an **Insured Plan**, if when such **Wrongful Act** occurred no **Entity** sponsored, was a **Fiduciary** of or was responsible for the **Administration** of, the **Insured Plan**;
 - f. alleging, based on, arising out of or attributable to such **Insured** gaining in fact any profit, remuneration or advantage to which such **Insured** was not legally entitled; however, this exclusion shall not apply unless a final judgment or other final adjudication adverse to such **Insured** establishes such illegal profit, remuneration or advantage; or
 - g. any deliberately fraudulent or dishonest act or omission or any willful violation of any statute or regulation by such **Insured**; however, this exclusion shall not apply unless a final judgment or other final adjudication adverse to such **Insured** establishes such a deliberately fraudulent or dishonest act or omission or willful violation.
6. The Insurer shall not be liable to make any payment for **Loss** which constitutes any obligation under an **Insured Plan** to pay to a participant or beneficiary of an **Insured Plan** money or property, or to grant a privilege, right, option or perquisite, including any such obligation which would exist under an **Insured Plan** if the **Insured Plan** complied with all applicable laws, or that portion of any settlement or judgment which constitutes any such obligation, unless and to the extent that such obligation is based upon a covered **Wrongful Act** by an **Insured Person** and such obligation is payable as a personal obligation of such **Insured Person**; however, this exclusion shall not apply to (i) **Defense Expenses**, or (ii) that portion of a settlement or judgment attributable to **Wrongful Acts** which actually or allegedly cause or contribute to a reduction or loss in the value of an **Insured Plan's** assets or a participant's account in an **Insured Plan** due to investment losses, lost investment opportunities, excessive costs or failure to comply with a participant's investment directions.

To determine the applicability of the foregoing Exclusions:

- a. no **Wrongful Act** of any **Insured Person** will be imputed to any other **Insured Person**;
- b. only **Wrongful Acts** of any past, present or future president, chief executive officer, chief financial officer or in-house general counsel of an **Entity** will be imputed to the **Entity**; and
- c. only **Wrongful Acts** of any past, present or future trustee or equivalent executive of an **Insured Plan** will be imputed to the **Insured Plan**.

CONDITIONS

7. Notice/Claim Reporting Provisions

If, during the **Policy Period**, or the Discovery Period (if purchased):

- a. an **Insured** first becomes aware of a **Wrongful Act** which may subsequently give rise to a **Claim**;
- b. the **Insureds** give the Insurer written notice of such **Wrongful Act**, including a description of the **Wrongful Act**, the identities of the potential claimants, the consequences which have resulted or may result from such **Wrongful Act** and the circumstances by which the **Insured** first became aware of such **Wrongful Act**; and

c. the **Insureds** request coverage under this coverage section for any subsequent **Claim** arising from such **Wrongful Act**;

then the **Insurer** will treat any such subsequent **Claim** as if it had been first made during the **Policy Period**.

As a condition precedent to any right to payment in respect of any **Claim**, the **Insured** must give the **Insurer** written notice of such **Claim**, with full details, as soon as practicable after the president, chief executive officer, chief financial officer, in-house general counsel or risk manager of an **Entity** first learns of such **Claim**.

8. **Defense Coverage**

If Duty to Defend coverage is granted pursuant to Item 8. of the Declarations for this coverage section, the **Insurer** shall have the right and duty to defend any **Claim** covered under Insuring Clause 1. of this coverage section, even if any of the allegations are groundless, false or fraudulent. The **Insurer's** duty to defend shall cease upon exhaustion of the applicable Limit of Liability set forth in Item 2. of the Declarations for this coverage section.

If Duty to Defend coverage is not granted pursuant to Item 8. of the Declarations for this coverage section, it shall be the duty of the **Insureds** and not the duty of the **Insurer** to defend any **Claims**. The **Insurer** shall have the right and shall be given the opportunity to effectively associate with the **Insureds** in the investigation, defense, and settlement (including the negotiation of a settlement) of any **Claim** that appears reasonably likely to be covered in whole or in part by this coverage section.

If Duty to Defend coverage is not granted pursuant to Item 8. of the Declarations for this coverage section, the **Insurer** shall, upon request, advance on a current basis covered **Defense Expenses** on behalf of the **Insureds** prior to the final disposition of the **Claim**. Any advancement of **Defense Expenses** shall be subject to, and conditioned upon, receipt by the **Insurer** of a written undertaking by the **Insureds** that such advanced amounts shall be repaid to the **Insurer** by the **Insureds** severally according to their respective interests if and to the extent any such **Insured** shall not be entitled under the terms and conditions of this coverage section to coverage for such **Defense Expenses**.

The **Insureds** agree to provide the **Insurer** with all information, assistance and cooperation which the **Insurer** reasonably requests, including without limitation attendance at hearings and trials, assistance in effecting settlements, obtaining and giving evidence and obtaining the attendance of witnesses, copies of records, investigations and pleadings. In the event of a **Claim** the **Insureds** will do nothing that may prejudice the **Insurer's** position or its potential or actual rights of recovery. The **Insurer** may make any investigation it deems necessary.

The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Expenses** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the **Insurer's** written consent, which shall not be unreasonably withheld. The **Insurer** shall not be liable for any settlement, **Defense Expenses**, assumed obligation or admission to which it has not consented.

9. **Limit of Liability and Retention**

The amount stated in Item 2(a). of the Declarations for this coverage section shall be the maximum aggregate liability of the **Insurer** under this coverage section for all **Loss** from all **Claims** for which this coverage section provides coverage, regardless of the time of payment by the **Insurer**, and regardless of whether such **Claims** are made or initiated during the **Policy Period** or during any Discovery Period (if purchased). The amount stated in Item 2(b). of the Declarations for this coverage section will be the maximum aggregate liability of the **Insurer** for all **Voluntary Settlements** and **Defense Expenses** covered under Insuring Clause 2. which are incurred by the **Insureds** as a result of all **Settlement Program Notices** for which this coverage section provides coverage, regardless of the time of payment by the **Insurer**. The amount stated in Item 2(b). of the Declarations for this coverage section is a sublimit which further limits and does not increase the **Insurer's** maximum liability under this coverage section.

All **Related Claims** will be treated as a single **Claim** made when the earliest of such **Related Claims** was first made, regardless of whether such date is before or during the **Policy Period**. The applicable Retention shall apply only once to each such single **Claim**.

The **Insurer's** liability with respect to all **Loss** resulting from each **Claim** shall apply only to that part of **Loss** which is excess of the applicable Retention set forth in Item 3. or Item 4. of the Declarations for this coverage section, which shall be borne by the **Entity** uninsured and at its own risk.

No Retention shall apply to (i) **Loss** under Insuring Clause 1 incurred by any **Insured Person** for which the **Entity** or **Insured Plan** is not permitted or required by common or statutory law to indemnify or is permitted or required by law to indemnify but does not do so by reason of **Financial Impairment**, (ii) any HIPAA civil money penalty covered by reason of subparagraph (i)(3) of the definition of **Loss** above, or (iii) **Voluntary Settlement** or **Defense Expenses** under Insuring Clause 2. The respective Retention for Indemnifiable **Loss** set forth in Items 3. and 4. of the Declarations for this coverage section shall apply to all other **Loss**, except as otherwise provided in the next succeeding paragraph. For purposes of this subsection 9. the resolutions of the **Entity** or **Insured Plan** shall be deemed to provide indemnification for **Loss** to the fullest extent permitted by common or statutory law.

If the **Entity** or **Insured Plan** is permitted or required by common or statutory law to indemnify the **Insured Persons** for any **Loss**, or to advance **Defense Expenses** on their behalf, and does not in fact do so other than for reasons of **Financial Impairment**, then any payment of such **Loss** or any advancement of such **Defense Expenses** by the Insurer under Insuring Clause 1 shall not be subject to any Retention amount, but the **Entity** shall reimburse and hold harmless the Insurer for such **Loss** up to the applicable Retention amount set forth in Item 3. or Item 4. of the Declarations for this coverage section.

If **Loss** resulting from a **Claim** is subject in part to no Retention and in part to the Retention for Indemnifiable **Loss**, the Retention for Indemnified **Loss** shall be applied only to that part of the **Loss** otherwise subject to such Retention.

Defense Expenses will be part of and not in addition to the Limit of Liability, and payment of **Defense Expenses** by the Insurer will reduce its Limit of Liability.

If the Limit of Liability is exhausted by the payment of **Loss**, the premium will be fully earned, all obligations of the Insurer under this coverage section will be completely fulfilled and exhausted, and the Insurer will have no further obligations of any kind or nature whatsoever under this coverage section.

10. Acquisition or Creation of Another Organization or Plan

If during the **Policy Period** the **Entity** creates or acquires a **Subsidiary** or **Insured Plan** or otherwise becomes a **Fiduciary** of or responsible for the **Administration** of any **Insured Plan** ("Event"), then coverage shall be afforded, subject to the terms and conditions of this coverage section, from the date of the Event for such **Subsidiary**, **Insured Plan**, and its **Insureds**, but only for **Wrongful Acts** occurring after the Event, unless the Insurer agrees by endorsement to provide coverage for **Wrongful Acts** occurring prior to such date.

If: (1) the total assets of the acquired or created **Subsidiary** are more than twenty-five percent (25%) of the consolidated total assets of the **Parent Company** as of the inception date of this coverage section as reflected in the **Parent Company's** then most recent consolidated financial statement; or (2) the total assets of the acquired or created **Insured Plan(s)** exceed twenty-five percent (25%) of the consolidated assets of all **Insured Plans** as of the inception date of this coverage section as reflected in the **Insured Plans'** then most recent consolidated financial statements, then as a condition precedent to the coverage afforded pursuant to this subsection 10.:

- a. the **Entity** shall give written notice to the Insurer of the Event within ninety (90) days of such Event together with such information the Insurer may require; and
- b. the **Entity** shall pay any reasonable additional premium required by the Insurer.

Notwithstanding the foregoing, no coverage shall be afforded pursuant to this subsection 10. with respect to any **ESOP** or any **Insured Persons** or **Entity** with respect thereto unless the Insurer, by specific endorsement hereto, agrees to afford such coverage. Any such coverage shall be at the terms and conditions and for the premium set forth in such endorsement.

11. Change of Control

If, during the **Policy Period**:

- a. the **Parent Company** shall consolidate with or merge into, or sell all or substantially all of its assets to any other person or organization or group of persons or organizations acting in concert; or

- b. any person or organization or group of persons or organizations acting in concert shall acquire an amount of the outstanding securities representing more than fifty percent (50%) of the voting power for the election of directors of the **Entity**, or acquires the voting rights of such an amount of such securities;

(either of the above events herein referred to as the "Transaction")

then this coverage section shall continue in full force and effect as to **Wrongful Acts** occurring prior to the effective time of the Transaction, but there shall be no coverage afforded by any provision of this coverage section for any **Wrongful Act** occurring after the effective time of the Transaction and the entire premium for this coverage section shall be deemed fully earned as of such time. The **Parent Company** shall also then have the right to elect a Discovery Period described in subsection 14. of this coverage section or a greater period as may be negotiated with the Insurer.

The **Parent Company** shall give the Insurer written notice of the Transaction as soon as practicable, but not later than thirty (30) days after the effective date of the Transaction.

12. Termination of Insured Plan

If the **Entity** terminates any **Insured Plan** before or after the inception date of the **Policy Period**, coverage under this coverage section with respect to such terminated **Insured Plan** shall continue until termination of this coverage section for those who were **Insureds** at the time of such **Insured Plan** termination, or who would have been **Insureds** at the time of such termination if this coverage section had been in effect, with respect to **Wrongful Acts** occurring prior to or after the date of such **Insured Plan** termination. The **Insureds** shall give written notice to the Insurer of such **Insured Plan** termination as soon as is practicable together with such information as the Insurer may require.

13. Marital or Domestic Partner Extension

Subject otherwise to the terms and conditions hereof, this coverage section shall cover **Loss** arising from any **Claim** made against the lawful spouse or domestic partner (whether such stature is derived by reason of statutory law, common law, or any other applicable law of any jurisdiction in the world) of an **Insured Person** for **Claims** arising solely out of his or her capacity as the spouse or domestic partner of an **Insured Person**, including such **Claims** that seek damages recoverable from marital community property, property jointly held by the **Insured Person** and the spouse or domestic partner; or property transferred from the **Insured Person** to the spouse or domestic partner; provided, however, this extension shall not afford coverage for **Wrongful Acts** of the spouse or domestic partner. All terms, conditions and other provisions of this coverage section, inclusive of any provision relative to the applicable retention, which would be applicable to **Loss** incurred by the **Insured Person** in such **Claim** shall also apply to **Loss** incurred by the spouse or domestic partner in such **Claim**.

14. Discovery Period

If: a. the **Parent Company** cancels this coverage section, b. either the Insurer or the **Parent Company** refuses or declines to renew this coverage section for any reason, or c. a Transaction described in subsection 11. occurs, and, within thirty (30) days after the end of the **Policy Period** the **Parent Company** elects to purchase the Discovery Period by paying the additional premium set forth in Item 6. (a) of the Declarations for this coverage section, then the coverage otherwise afforded by this coverage section will be extended for the period set forth in Item 6. (b) of the Declarations for this coverage section but only for **Wrongful Acts** occurring before the end of the **Policy Period** or the date of any Transaction under subsection 11., whichever is earlier. The Limit of Liability for the Discovery Period (if purchased) shall be part of, and not in addition to, the Limit of Liability for the **Policy Period**.

As a condition precedent to the right to exercise the Discovery Period, the total premium for this coverage section must have been paid in full.

If the Discovery Period is purchased, the entire premium for the Discovery Period shall be deemed fully earned at its commencement.

Subject to all the terms and conditions of this subsection 14., the Insurer shall, upon request, provide the **Parent Company** with a quotation for a three (3) year Discovery Period.

15. Representations; Severability

The **Insureds** represent the particulars and statements contained in the Application are true, accurate and complete, and agree that this coverage section is issued in reliance on the truth of those representations, and agree that such particulars and statements, which are deemed to be incorporated into and to constitute a part of this coverage section, are the basis of this coverage section.

In the event any of the particulars or statements in the Application are untrue, this coverage section shall not afford coverage for any **Claim** based upon, arising out of, directly or indirectly resulting from, or in consequence of any matters which were not truthfully disclosed in the Application to the extent such **Claim** is against:

- a. any **Insured Person** who knew the facts which were not truthfully disclosed in the Application;
- b. the **Entity** if the president, chief executive officer, chief financial officer or in-house general counsel of the **Entity** knew the facts which were not truthfully disclosed in the Application;
- c. the **Insured Plan** if a trustee or equivalent executive knew the facts which were not truthfully disclosed in the Application;

whether or not such **Insured Person**, officer or executive knew the Application contained the untruthful disclosure.

The Insurer agrees that it shall not rescind or seek to rescind this coverage section with respect to any **Insured**.

16. Recourse/Waiver


If this coverage section is purchased by an **Insured Plan** and if the Insurer pays **Loss** under this coverage section, then the Insurer shall have a right of recourse for such **Loss** against any **Insured**, other than an **Insured Plan**, that caused or contributed to such **Loss**. However, if this coverage section is purchased by an **Insured** other than an **Insured Plan**, the Insurer shall have no right of recourse against an **Insured**.

17. Payment Priority

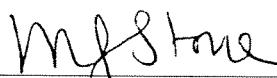
If the amount of any covered **Loss** which is otherwise due and owing by the Insurer under this coverage section exceeds the then remaining Limit of Liability applicable to such **Loss**, the Insurer shall pay such **Loss** (subject to such Limit of Liability) in the following priority:

- a. First, the Insurer shall pay any such covered **Loss** incurred by **Insured Persons**;
- b. Second, only if and to the extent the payment under subparagraph a. above does not exhaust the applicable Limit of Liability, the Insurer shall pay any such covered **Loss** incurred by other **Insureds**.

In witness whereof, the Insurer issuing this Policy has caused this Policy to be signed by its authorized officers, but it shall not be valid unless also signed by a duly authorized representative of the Company.



Corporate Secretary



President & COO

Financial Products Policy

Coverage Section: **Fiduciary Liability**

Insurer: **RLI Insurance Company**

Effective Date of
this Endorsement: **December 15, 2011**

To be attached to and form part of
Policy No. **EPG0011250**

Issued to: **Hawaii Employer-Union Health Benefits Trust Fund**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SPECIFIC LITIGATION EXCLUSION

It is hereby understood and agreed that no coverage is afforded to any **Loss** or **Claim** arising out of the following:

Lawrence O'Goreck, et al v. HPEHF
Gail Awakuni, et al v. Bob Awana
Marion Everson, et al v. State of Hawaii

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

Financial Products Policy

Coverage Section: **Fiduciary Liability**

Insurer: **RLI Insurance Company**

Effective Date of
this Endorsement: **December 15, 2011**

To be attached to and form part of
Policy No. **EPG0011250**

Issued to: **Hawaii Employer-Union Health Benefits Trust Fund**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMEND REPRESENTATIONS;SEVERABILITY

It is hereby understood and agreed that **CONDITIONS**, Subsection 15., **Representations;Severability** is amended to read as follows:

15. **Representations;Severability**

The **Insureds** represent the particulars and statements contained in the Application are true, accurate and complete, and agree that this coverage section is issued in reliance on the truth of those representations, and agree that such particulars and statements, which are deemed to be incorporated into and to constitute a part of this coverage section, are the basis of this coverage section. In the event any of the particulars or statements in the Application are untrue, this coverage section will be void with respect to any **Insured** who knew the facts that were not truthfully disclosed or to whom such knowledge is imputed, whether or not such **Insured** knew that Application contained the untruthful disclosure. No knowledge or information possessed by an **Insured Person** will be imputed to any other **Insured Person**. Only the knowledge or information possessed by the person who signed the Application will be imputed to the **Entity**.

The Insurer agrees that it shall not rescind or seek to rescind this coverage section with respect to any **Insured**.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

Financial Products Policy

Coverage Section: **Fiduciary Liability**

Insurer: **RLI Insurance Company**

Effective Date of
this Endorsement: **December 15, 2011**

To be attached to and form part of
Policy No. **EPG0011250**

Issued to: **Hawaii Employer-Union Health Benefits Trust Fund**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMEND DEFINITION OF FIDUCIARY

It is hereby understood and agreed that Subsection 3, **DEFINITIONS**, is amended to add the following to the definition of "**Fiduciary**":

"any natural person or **Entity** who is a **Fiduciary** (as defined by the laws of the State of Hawaii or common law) of an **Insured Plan**, or a person or **Entity** who exercises discretionary control with respect to the management of an **Insured Plan** or the disposition of its assets."

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

Financial Products Policy

Coverage Section: **Fiduciary Liability**

Insurer: **RLI Insurance Company**

Effective Date of
this Endorsement: **December 15, 2011**

To be attached to and form part of
Policy No. **EPG0011250**

Issued to: **Hawaii Employer-Union Health Benefits Trust Fund**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PENDING AND PRIOR LITIGATION ENDORSEMENT

It is hereby understood and agreed that Item 7., **Prior or Pending Date**, of the Declarations, of this coverage section is amended to read as follows:

Item 7. **Prior or Pending Date**: April 1, 2002 - Primary \$5,000,000
December 31, 2003 - \$5,000,000 xs \$5,000,000

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

Financial Products Policy

Coverage Section: **Fiduciary Liability**

Insurer: **RLI Insurance Company**

Effective Date of
this Endorsement: **December 15, 2011**

To be attached to and form part of
Policy No. **EPG0011250**

Issued to: **Hawaii Employer-Union Health Benefits Trust Fund**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMEND SUBSECTION 7. NOTICE/CLAIM REPORTING PROVISIONS

It is hereby understood and agreed that **CONDITIONS**, Subsection 7., **Notice/Claim Reporting Provisions**, is amended to read as follows:

7. Notice/Claim Reporting Provisions

If, during the **Policy Period**, or the Discovery Period (if purchased):

- a. an **Insured** first becomes aware of a **Wrongful Act** which may subsequently give rise to a **Claim**,
- b. the **Insureds** give the Insurer written notice of such **Wrongful Act**, including a description of the **Wrongful Act**, the identities of the potential claimants, the consequences which have resulted or may result from such **Wrongful Act** and the circumstances by which the **Insured** first became aware of such **Wrongful Act**, and
- c. the **Insureds** request coverage under this coverage section for any subsequent **Claim** arising from such **Wrongful Act**.

then the Insurer will treat any such subsequent **Claim** as if it had been first made during the **Policy Period**.

As a condition precedent to any right to payment in respect to any **Claim**, the **Insured** must give the Insurer written notice of such **Claim**, with full details, as soon as practicable after the Administrator or the Hawaii Attorney General becomes aware of such **Claim**, but in no event later than sixty (60) days after the expiration of the **Policy Period**.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

Financial Products Policy

Coverage Section: **Fiduciary Liability**

Insurer: **RLI Insurance Company**

Effective Date of
this Endorsement: **December 15, 2011**

To be attached to and form part of
Policy No. **EPG0011250**

Issued to: **Hawaii Employer-Union Health Benefits Trust Fund**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMEND DISCOVERY PERIOD ENDORSEMENT

It is agreed that the first and last paragraphs of Subsection 14., **Discovery Period** of this coverage section is amended to read as follows:

14. **Discovery Period**

If: a. the **Parent Company** cancels this coverage section, b. either the Insurer or the **Parent Company** refuses or declines to renew this coverage section for any reason, or c. a Transaction described in Subsection 11. occurs, and, within sixty (60) days after the end of the **Policy Period** the **Parent Company** elects to purchase the Discovery Period by paying the additional premium set forth in Item 6. (a) of the Declarations of this coverage section, then the coverage otherwise afforded by this coverage section will be extended for a period of time set forth in Item 6. (b) of the Declarations for this coverage section but only for **Wrongful Acts** occurring before the end of the **Policy Period** or the date of any Transaction under Subsection 11., whichever is earlier. The Limit of Liability for the Discovery Period (if purchased) shall be part of, and not in addition to, the Limit of Liability for the **Policy Period**.

Subject to all the terms and conditions of this subsection 14., the Insurer shall, upon request, provide the **Parent Company** with quotation for a three (3) year or six (6) year Discovery Period.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

Financial Products Policy

Coverage Section: **Fiduciary Liability**

Insurer: **RLI Insurance Company**

Effective Date of
this Endorsement: **December 15, 2011**

To be attached to and form part of
Policy No. **EPG0011250**

Issued to: **Hawaii Employer-Union Health Benefits Trust Fund**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMEND DEFINITION OF INSURED PERSON

It is hereby understood and agreed that **DEFINITIONS**, Subsection 3., "**Insured Person**", of this coverage section is amended to include the following:

- d. any natural persons who were, now are, or shall become trustees, directors, officers or employees of the **Entity**, any **Insured Plan** or the State of Hawaii in his or her capacity as a **Fiduciary** or trustee of an **Insured Plan** or as a person performing **Administration** of an **Insured Plan**.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

Financial Products Policy

Coverage Section: **Fiduciary Liability**

Insurer: **RLI Insurance Company**

Effective Date of
this Endorsement: **December 15, 2011**

To be attached to and form part of
Policy No. **EPG0011250**

Issued to: **Hawaii Employer-Union Health Benefits Trust Fund**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMEND DEFINITION OF INSURED PLAN

It is hereby understood and agreed the Subsection 3., **Definition of Insured Plan**, is amended to include (but not be limited to):

- f. any employee benefit or multiemployer plans established, administered, operated or sponsored solely by the **Entity** or the State of Hawaii for the benefit of employee-beneficiaries, dependent-beneficiaries, and qualified beneficiaries under Chapter 87A, Hawaii Revised Statutes, including any amendments thereto;
- g. any plans or programs while such plan or program is being actively developed, formed or proposed by the **Insured** prior to the formal creation of such plan or program.

It is further agreed that the last sentence in the definition is deleted in its entirety.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

Executive Plus Directors and Officers Liability Policy

Coverage Section: **Fiduciary Liability**

Insurer: **RLI Insurance Company**

Effective Date of
this Endorsement: **December 15, 2011**

To be attached to and form part of
Policy No. **EPG0011250**

Issued to: **Hawaii Employer-Union Health Benefits Trust Fund**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMEND CONDUCT EXCLUSIONS

It is agreed that **EXCLUSIONS**, Subsection 5f. and 5g. are amended to read as follows:

5. The Insurer shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any of the **Insureds** based upon, arising out of, directly or indirectly resulting from, or in consequence of:
 - f. alleging, based on, arising out of or attributable to such **Insured** gaining in fact any profit, remuneration or advantage to which such **Insured** was not legally entitled; however, this exclusion shall not apply unless a final non-appealable adjudication in the underlying action adverse to such **Insured** establishes such illegal profit, remuneration or advantage; or
 - g. any deliberately fraudulent or deliberate dishonest act or any willful violation of any statute or regulation by such **Insured**; however, this exclusion shall not apply unless a final non-appealable adjudication in the underlying action adverse to such **Insured** establishes such a deliberately fraudulent or deliberate dishonest act or willful violation.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

Executive Plus Directors and Officers Liability Policy

Coverage Section: **Fiduciary Liability**

Insurer: **RLI Insurance Company**

Effective Date of
this Endorsement: **December 15, 2011**

To be attached to and form part of
Policy No. **EPG0011250**

Issued to: **Hawaii Employer-Union Health Benefits Trust Fund**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMEND DEFINITION OF WRONGFUL ACT

It is hereby understood and agreed that **DEFINITIONS**, Subsection 3., "**Wrongful Act**", of this coverage section is amended to add the following:

"**Wrongful Act**" means:

- e. the failure to comply with the privacy provisions of HIPAA, but only with respect to an **Insured Plan**; and
- f. any act, error or omission actually or allegedly committed or attempted in determining eligibility or coverage for or under, supervision, recommending or directing payment or denial of payment under any **Insured Plan**.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

Executive Plus Directors and Officers Liability Policy

Coverage Section: **Fiduciary Liability**

Insurer: **RLI Insurance Company**

Effective Date of
this Endorsement: **December 15, 2011**

To be attached to and form part of
Policy No. **EPG0011250**

Issued to: **Hawaii Employer-Union Health Benefits Trust Fund**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMEND SUBSECTION 16. RECOURSE/WAIVER

It is agreed that **Conditions**, Subsection 16. **Recourse/Waiver** is amended to read as follows:

16. **Recourse/Waiver**

If this coverage section is purchased by an **Insured Plan** and if the Insurer pays **Loss** under this coverage section, then the Insurer shall have a right of recourse for such **Loss** against any **Insured**, other than an **Insured Plan**, that caused or contributed to such **Loss**. However, if this coverage section or a portion of this coverage section is purchased by an **Insured** other than an **Insured Plan**, the Insurer shall have no right of recourse against an **Insured**.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

Financial Products Policy

Coverage Section: **Fiduciary Liability**

Insurer: **RLI Insurance Company**

Effective Date of
this Endorsement: **December 15, 2011**

To be attached to and form part of
Policy No. **EPG0011250**

Issued to: **Hawaii Employer-Union Health Benefits Trust Fund**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSIONS AMENDATORY ENDORSEMENT

It is hereby understood and agreed that the last paragraph of **Exclusions**, Item b. is amended to delete in-house general counsel.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

Financial Products Policy

Coverage Section: **Fiduciary Liability**

Insurer: **RLI Insurance Company**

Effective Date of
this Endorsement: **December 15, 2011**

To be attached to and form part of
Policy No. **EPG0011250**

Issued to: **Hawaii Employer-Union Health Benefits Trust Fund**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMEND DEFINITION OF LOSS

It is hereby understood and agreed that the first paragraph of **DEFINITIONS**, Subsection 3, "**Loss**" of this coverage section is amended to read as follows:"

"**Loss**" means monetary damages, judgments, settlements including but not limited to pre-judgment and post-judgment interests, punitive, exemplary or multiple damages where insurable under applicable law, and **Defense Expenses** which the **Insured Persons** are legally obligated to pay as a result of a covered **Claim**.

The law of jurisdiction most favorable to the insurability of those punitive, exemplary or multiple damages shall control whether such damages are insurable, provided that such jurisdiction is where:

- a. those damages were awarded or imposed;
- b. any **Wrongful Act** occurred for which such damages were awarded or imposed;
- c. the **Entity** or **Insured Plan** is incorporated, created or organized; or
- d. the Insurer is incorporated or has its principal place of business.

It is further agreed that **DEFINITIONS 3. Loss**, Subsections (i) (1) and (i) (3) are deleted and replaced with the following:

- (1) the five percent (5%) or less, or the twenty percent (20%) or less, civil penalties imposed upon an **Insured** as a **Fiduciary** under Section 502(i) or (l), respectively, of **ERISA**, or any other similar state or local common or statutory law,
- (3) any civil money penalties imposed upon an **Insured** for violation of the privacy provisions of the Health Insurance Portability and Accountability Act ("HIPAA"); provided the Company's maximum aggregate liability for all such HIPAA civil money penalties on account of all **Claims** first made during the **Policy Period** shall be \$2,000,000 which is a sublimit that further limits and does not increase the Insurer's maximum liability under this coverage section;

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.



ACE INA Excess and Surplus Insurance Services, Inc.
601 South Figueroa Street
15th Floor
Los Angeles, CA 90017
CA License #0594384

213-833-3112
213-833-3111

tel
fax

www.ace-ina.com

December 22, 2011

Carrie Lepore
Senior Underwriter - Professional Risk

Michele Cowen
AON Risk Insurance Services West, Inc.
707 Wilshire Blvd.
Suite 2600
Los Angeles, CA 90017

RE: Insured: Hawaii Employer-Union Health Benefits Trust Fund
Coverage: **ACE Municipal AdvantageSM Public Entity Liability**
Policy No: EON G23632913 006
Company Paper: Illinois Union Insurance Company
Policy Form: PF-23536 (01/08)
Policy Period: 12/15/2011 to 12/15/2012

Dear Michele,

We are pleased to enclose the original and one (1) copy of the captioned policy.

As producer of record, you are responsible for collecting and filing all necessary surplus lines taxes, fees and documentation in accordance with state surplus lines laws and/or regulations, if applicable.

Also, as a reminder, all claim notices under this policy should be provided in writing to the following address:

ACE Professional Risk
P.O. Box 5105
Scranton, PA 18505-0518

We have reviewed the policy and trust you will find it to be in order. Should you have any questions or concerns, please advise us promptly.

Thank you for working with us on the placement of this risk. We appreciate your support and look forward to working with you in the future.

Regards,

Christopher Calnon
Vice President
ACE USA – Professional Risk



Illinois Union Insurance Company

ACE Municipal AdvantageSM
Public Entity Liability Policy
Declarations

This Policy is issued by the stock insurance company listed above.

THIS POLICY IS A CLAIMS MADE AND REPORTED POLICY. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF APPLICABLE, AND WHICH ARE THE RESULT OF WRONGFUL ACTS COMMITTED BEFORE THE END OF THE POLICY PERIOD. PLEASE READ THIS POLICY CAREFULLY.

THE LIMITS OF LIABILITY AVAILABLE TO PAY INSURED DAMAGES SHALL BE REDUCED BY AMOUNTS INCURRED FOR CLAIMS EXPENSES. FURTHER NOTE THAT AMOUNTS INCURRED FOR DAMAGES AND CLAIMS EXPENSES SHALL ALSO BE APPLIED AGAINST THE RETENTION AMOUNT.

TERMS THAT APPEAR IN BOLD FACE TYPE HAVE SPECIAL MEANING. PLEASE REFER TO SECTION II, DEFINITIONS.

Policy No. EON G23632913 006	
Item 1. Public Entity:	Hawaii Employer-Union Health Benefits Trust Fund
Principal Address:	201 Merchant Street Suite 1520 Honolulu, HI 96813
Item 2. Policy Period:	From 12:01 a.m. 12/15/2011 To 12:01 a.m. 12/15/2012 (Local time at the address shown in Item 1)
Item 3. Limits of Liability Each Claim and in the Aggregate for all Claims including Claims Expenses:	\$3,000,000
Item 4. Retention	A. For Damages and Claims Expenses under Insuring Agreement IA.1: \$ Zero each Claim B. For Damages and Claims Expenses under Insuring Agreement IA.2 and IB: \$25,000 each Claim C. For Damages and Claims Expenses under Insuring Agreement IC: \$25,000 each Claim

Item 5. Notice to Insurer :		
A.	Notice of Claim or Wrongful Act : Director of Professional Liability Claims ACE Professional Risk P.O. Box 5105 Scranton, PA 18505-0518	
B.	All other notices: Chief Underwriting Officer ACE USA - Professional Risk 140 Broadway, 41 st Floor New York, New York 10005	
Item 6.	Policy Premium:	\$24,104
Item 7. Extended Reporting Period:		
A.	Additional Premium:	<u>100%</u> of Last Annual Policy Premium
B.	Additional Period:	<u>12</u> Months
Item 8. Crisis Management Fund:		
		\$25,000

IN WITNESS WHEREOF, the **Insurer** has caused this **Policy** to be countersigned by a duly authorized representative of the **Insurer**.



DATE: 12/22/2011

Authorized Representative



ACE Municipal AdvantageSM Public Entity Liability Policy

In consideration of the payment of the premium, in reliance upon the **Application**, and subject to the Declarations and the terms and conditions, limit of liability and other provisions of this **Policy**, the **Insureds** and the **Insurer** agree as follows:

I. INSURING AGREEMENT

A. Public Entity Management Liability

1. Public Officials' Liability

The **Insurer** will pay on behalf of the **Insured Persons** all **Damages** and **Claims Expenses** for which the **Insured Persons** are not indemnified by the **Public Entity** and which the **Insured Persons** become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** and reported to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.

2. Public Entity Reimbursement

The **Insurer** will pay on behalf of the **Public Entity** all **Damages** and **Claims Expenses** for which the **Public Entity** has indemnified the **Insured Persons** and which the **Insured Persons** become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** and reported to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.

B. Public Entity Liability

The **Insurer** will pay on behalf of the **Public Entity** all **Damages** and **Claims Expenses** for which the **Public Entity** becomes legally obligated to pay by reason of a **Claim** first made against the **Public Entity** and reported to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.

C. Employment Practices Liability

The **Insurer** will pay on behalf of the **Insureds** all **Damages** and **Claims Expenses** for which the **Insureds** becomes legally obligated to pay by reason of a **Claim** first made against them and reported to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.

D. Public Entity Crisis Management Coverage

The **Insurer** will pay on behalf of the **Public Entity** the **Crisis Management Expense** for which the **Public Entity** becomes legally obligated to pay by reason of a **Crisis Event** first occurring during the **Policy Period**, but only up to the limit of liability for the **Crisis Management Fund**.

II. DEFENSE

- A. The **Insurer** shall have the right and duty to defend any covered **Claim** made against the **Insured** and reported to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for any **Wrongful Act** taking place prior to the end of the **Policy Period**, even if such **Claim** is groundless, false or fraudulent. The **Insured** shall not admit or assume liability or settle or negotiate to settle any **Claim** or incur any **Claims Expenses** without the prior written consent of the **Insurer**, and the **Insurer** shall have

the right to appoint counsel and to make such investigation and defense of a covered **Claim** as it deems necessary.

- B. Solely with respect to Insuring Agreements I.A.2, **Public Entity** Reimbursement, and I.B, **Public Entity** Liability, the **Insurer** shall not settle any **Claim** without the written consent of the **Public Entity**. The **Insurer** shall have the right to settle any **Claim** at its sole discretion with respect to all other Insuring Agreements. If the **Public Entity** refuses to consent to a settlement or a compromise recommended by the **Insurer** and acceptable to the claimant, then the **Insurer's** Limit of Liability under this **Policy** with respect to such **Claim** shall be reduced to (1) the amount of **Damages** for which the **Claim** could have been settled plus all **Claims Expenses** incurred until the date of such refusal, and (2) 50% of all subsequent covered **Claims Expenses** in excess of such amount, which sum shall not exceed the unexhausted Limits of Liability specified in Item 3 of the Declarations. The remaining 50% of **Claims Expenses** and all subsequent **Damages** shall be borne uninsured by the **Insureds** and at their own risk. In such event, the **Insurer** shall tender a check to the **Insured** for the recommended settlement amount, and shall be relieved of any further duty or obligation, except as otherwise stated in this subsection B.
- C. The **Insurer** shall not be obligated to investigate, defend, pay or settle, or continue to investigate, defend, pay or settle, any **Claim** after any applicable Limit of Liability specified in Item 3 of the Declarations has been exhausted by payment of **Damages** and **Claims Expenses**, or by any combination thereof, or after the **Insurer** has deposited the remainder of any unexhausted applicable Limit of Liability into a court of competent jurisdiction. In such case, the **Insurer** shall withdraw from the investigation, defense, payment or settlement of such **Claim** and shall tender the investigation, defense and control of such **Claim** to the **Insured**.
- D. The **Insureds** shall cooperate with the **Insurer**, and provide to the **Insurer** all information and assistance which the **Insurer** reasonably requests including but not limited to attending hearings, depositions and trials and assistance in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and conducting the defense of any **Claim** covered by this **Policy**. The **Insureds** shall do nothing that may prejudice the **Insurer's** position. The **Insureds** shall immediately forward to the **Insurer**, at the address indicated in Item 5A of the Declarations, every demand, notice, summons, or other process or pleadings received by the **Insured** or its representatives.

III. DEFINITIONS

When used in this **Policy**:

- A. **Adverse Publicity** means the publication of unfavorable information regarding the **Public Entity** which can reasonably be considered to materially reduce public confidence in the competence, integrity or viability of the **Public Entity** to conduct business. Such publication must occur in a report about an **Insured** appearing in:
1. a daily newspaper of general circulation; or
 2. a radio or television news program.
- B. **Application** means all applications, including any attachments thereto, and all other information and materials submitted by or on behalf of the **Insureds** to the **Insurer** in connection with the **Insurer** underwriting this **Policy** or any **Policy** of which this **Policy** is a direct or indirect renewal or replacement or which it succeeds in time. All such applications, attachments, information and materials are deemed attached to and incorporated in this **Policy**.
- C. **Bodily Injury** means physical injury to the body, physical pain, sickness, disease, and death. **Bodily Injury** also means mental distress, mental injury, mental anguish, mental tension, pain and suffering, shock and humiliation (collectively "**Mental Distress**"), but only if such **Mental Distress** arises from and is accompanied by injury to the claimant's body, sickness, disease or death.

D. **Claim** means:

1. a written demand against any **Insured** for monetary **Damages** or non-monetary or injunctive relief;
2. a civil proceeding against any **Insured** for monetary **Damages**, services, or non-monetary or injunctive relief, commenced by the service of a complaint or similar pleading;
3. a binding arbitration proceeding, only if the **Insurer** has provided its prior written consent to such proceeding, against any **Insured** seeking monetary **Damages** or non-monetary or injunctive relief;
4. a civil, administrative or regulatory proceeding against any **Insured** commenced by the issuance of a notice of charge or formal investigative order, including without limitation any such proceeding by or in association with the Equal Employment Opportunity Commission or any other similar federal, state or local governmental authority located anywhere in the world;
5. a civil, administrative or regulatory investigation against any **Insured**, commenced by the service upon or other receipt by any **Insured** of a written notice or subpoena from the investigating authority identifying any **Insured** as an individual against whom a civil, administrative or regulatory investigation or proceeding is to be commenced; or
6. solely with respect to coverage provided under Insuring Agreement I.C, a written request of the **Insured** to toll or waive a statute of limitations applicable to a **Claim** described in paragraphs 1 through 5 above.

including any appeal therefrom. However, **Claim** shall not include a labor or grievance arbitration or proceeding which is subject or pursuant to a collective bargaining agreement

E. **Claims Expenses** means:

1. reasonable and necessary attorneys' fees, expert witness fees and other fees and costs incurred by the **Insurer**, or by the **Insured** with the **Insurer's** prior written consent, in the investigation and defense of covered **Claims**;
2. reasonable and necessary premiums for any appeal bond, attachment bond or similar bond, provided the **Insurer** shall have no obligation to apply for or furnish such bond; and
3. prejudgment and post-judgment interest awarded in any **Claim**.

Claims Expenses shall not include wages, salaries, fees or costs of directors, officers or **Employees** of the **Insurer** or the **Insured** or **Crisis Management Expenses**.

F. **Crisis Event** means one of the following, except where coverage is otherwise excluded under Exclusions H and R of the **Policy**.

1. Management Event: The incapacity, death or state or federal criminal indictment of an **Insured Person** for whom the **Public Entity** has purchased and continues to maintain key individual life insurance;
2. Funding Cancellation: The cancellation, withdrawal or revocation of \$500,000 or more in funding, donation(s), grant(s) or bequest(s) by a non-government entity or person to the **Public Entity**;
3. Bankruptcy: The disclosure by the **Public Entity** of (a) its intention to file or its actual filing for protection under federal bankruptcy laws, or (b) a third-party's intention to file or its actual filing of an involuntary bankruptcy petition under federal bankruptcy laws with respect to the **Public Entity**;
4. Employment Event: The disclosure by the **Public Entity** of the threatened or actual commencement by a third-party of an action, audit or investigation alleging a **Wrongful Employment Practice** by the **Public Entity** which has caused or is reasonably likely to cause **Adverse Publicity**; and

5. **Material Event:** Any other material event which, in the good faith opinion of the **Public Entity**, has caused or is reasonably likely to result in **Adverse Publicity**, but only if such material event is scheduled for coverage by written endorsement to this **Policy**.
- G. **Crisis Management Expense** means the following expenses incurred by the **Public Entity** during a period beginning ninety (90) days prior to and in reasonable anticipation of a **Crisis Event** and ending ninety (90) days after an actual or reasonably anticipated **Crisis Event**, irrespective of whether a **Claim** is actually made with respect to the subject **Crisis Event**; provided, however, that the **Insurer** must have been notified of the **Crisis Management Expense** within thirty (30) days of the date the **Public Entity** first incurs the subject **Crisis Management Expense**:
1. The reasonable and necessary expenses directly resulting from a **Crisis Event** which the **Public Entity** incurs for **Crisis Management Services** provided to the **Public Entity** by a **Crisis Management Firm**, and
 2. The reasonable and necessary expenses directly resulting from a **Crisis Event** which the **Public Entity** incurs for (a) advertising, printing, or the mailing of matter relevant to the **Crisis Event**, and (b) out of pocket travel expenses incurred by or on behalf of the **Public Entity** or the **Crisis Management Firm**; provided, however, **Crisis Management Expense** does not include those amounts which otherwise would constitute compensation, benefits, fees, overhead, charges or expenses of an **Insured** or any of the **Insured's Employees**.
- H. **Crisis Management Firm** means a marketing firm, public relations firm, law firm, or other professional services entity retained by the **Insurer**, or by the **Public Entity** with the **Insurer's** prior written consent, to perform **Crisis Management Services** arising from a **Crisis Event**.
- I. **Crisis Management Fund** means the amount specified in Item 8 of the Declarations.
- J. **Crisis Management Services** means the professional services provided by a **Crisis Management Firm** in counseling or assisting the **Public Entity** in reducing or minimizing the potential harm to the **Public Entity** caused by the public disclosure of a **Crisis Event**.
- K. **Damages** means compensatory damages, judgments, any award of prejudgment and post-judgment interest, and settlements which the **Insured** becomes legally obligated to pay on account of any **Claim** first made against any **Insured** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for **Wrongful Acts** to which this **Policy** applies. Such damages include punitive and exemplary damages and the multiple portion of any multiplied damage award, if and to the extent such damages are insurable under the law of the applicable jurisdiction most favorable to the insurability of such damages.

With respect to any **Claim** arising out of a **Wrongful Employment Practice**, **Damages** shall also mean:

1. front-pay and back-pay, except as otherwise stated below; and
2. liquidated damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act.

Damages shall not include:

1. any amount for which the **Insured** is not financially liable or legally obligated to pay;
2. taxes, fines or penalties;
3. matters uninsurable under the laws pursuant to which this **Policy** is construed;
4. employment-related benefits, retirement benefits, perquisites, vacation and sick days, medical and insurance benefits, deferred cash incentive compensation or any other type of compensation other than salary, wages, bonuses, commissions and non-deferred cash incentive compensation;

5. the cost to comply with any injunctive or other non-monetary or declaratory relief, including specific performance, or any agreement to provide such relief;
 6. any liability or costs incurred to modify any building or property to make it more accessible or accommodating to any person, or any liability or costs in connection with any educational, sensitivity or other corporate program, policy or seminar;
 7. **Crisis Management Expenses**; or
 8. liquidated damages, except to the extent specifically included as **Damages** above.
- L. **Employee** means any natural person whose labor or services are engaged and directed by the **Public Entity** (including any part-time, seasonal and temporary employee or volunteer), but only while acting in his or her capacity as such, and any natural person who is leased to the **Public Entity**, but only if the **Public Entity** provides indemnification to such leased person in the same manner as is provided to the **Public Entity's** employees.
- M. **Extended Reporting Period** means the period for the extension of coverage, if elected, described in Section VII, **Extended Reporting Periods**.
- N. **Incidental Medical Malpractice** means injury arising out of emergency medical services rendered or which reasonably should have been rendered to any person or persons during the **Policy Period** by any duly certified emergency medical technician, paramedic or nurse who is an **Employee** of the **Public Entity** or acting on its behalf to provide such services, but is not employed, either full-time or part-time, at a hospital, clinic or nursing home facility. **Incidental Medical Malpractice** also includes injury arising out of the dispensation of prescribed medicine.
- O. **Insured** means the **Public Entity** and any **Insured Persons**;
- P. **Insured Persons** means the following, but only to the extent such persons are acting solely in their capacities as legally authorized representatives of the **Public Entity**:
1. all persons who were, now are or shall be lawfully elected or duly appointed officials or **Employees**;
 2. commissions, boards, or other units, and members and **Employees** thereof, operated by and under the jurisdiction of such **Public Entity** and within an apportionment of the total operating budget indicated in the application for this **Policy**;
 3. volunteers acting for or on behalf of, and at the written request and under the direction of, the **Public Entity**;
 4. elected or duly appointed officials and **Employees** of the **Public Entity** duly appointed at the written request of the **Public Entity** to serve with an outside tax exempt entity;
 5. any person providing services for the **Public Entity** under a mutual aid or similar written agreement; and
 6. elected or duly appointed officials and **Employees** of the **Public Entity** as a director or officer of a non-profit organization created and operated under Section 501c(3) of the Internal Revenue code of 1988, amended, for any **Wrongful Acts** they have committed in their respective capacities as a director or officer of such non-profit organization, provided that: (1) the appointment of the elected or duly appointed official or **Employee** to such non-profit organization is based solely upon the person's being an elected or duly appointed official or **Employee** of the **Public Entity**; and (2) such elected or duly appointed official or **Employee** is directed in writing by the **Public Entity** to serve as a director or officer of such non-profit organization prior to beginning such service.
- Q. **Insurer** means the insurance company providing this insurance.

- R. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.
- S. **Personal Injury** means injury arising out of one or more of the following offenses:
1. false arrest, detention or imprisonment;
 2. malicious prosecution;
 3. libel, slander or other defamatory or disparaging material;
 4. publication or an utterance in violation of an individual's right to privacy; and
 5. wrongful entry or eviction, or other invasion of the right to private occupancy.
- T. **Policy** means, collectively, the Declarations, the **Application**, this **Policy**, including any endorsements.
- U. **Policy Period** means the period of time specified in Item 2 of the Declarations, subject to prior termination pursuant to Section XIV, Termination of the **Policy**.
- V. **Pollutants** means any substance exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by the United States Environmental Protection Agency or any federal, state, county, municipal or local counterpart thereof or any foreign equivalent. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials, including materials to be recycled, reconditioned, or reclaimed. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, noise, fungus (including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi) and electric or magnetic or electromagnetic field.
- W. **Property Damage** means:
1. physical injury to, or loss or destruction of, tangible or intangible property, including the loss of use thereof; and
 2. loss of use of tangible or intangible property which has not been physically injured, lost, damaged or destroyed.
- X. **Public Entity** means the municipality, governmental body, department or unit which is named in Item 1 of the Declarations.
- Y. **Retaliation** means retaliatory treatment on account of:
1. the actual or attempted exercise by an **Employee** of any rights of such an **Employee** under law, including workers' compensation laws, the Family and Medical Leave Act, and the Americans with Disabilities Act;
 2. the filing of any claim under any statute, rule or regulation to protect an **Employee** from discrimination by his or her employer if such **Employee** discloses or threatens to disclose to a superior or a governmental agency, or if such **Employee** gives testimony relating to, any activity within such employer's operations which may be in violation of a statute, rule or regulation or any professional codes of ethics, including the Federal False Claims Act;
 3. the disclosure or threat of disclosure by an **Employee** of the **Public Entity** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder;

4. an **Employee** assisting, cooperating or testifying in any proceeding or investigation into whether an **Insured** violated any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; or
 5. any strike of any **Employee** of the **Public Entity**
- Z. **Sexual Abuse and Molestation** means any actual, attempted or alleged criminal sexual conduct of a person by another person, or persons acting in concert, which causes physical and/or mental injuries. **Sexual Abuse and Molestation** includes: sexual molestation, sexual assault, sexual exploitation or sexual injury. **Sexual Abuse and Molestation** does not include **Sexual Harassment**.
- AA. **Sexual Harassment** means any actual or alleged unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature, of a person by another person, or persons acting in concert, which causes physical and/or mental injuries. **Sexual Harassment** includes:
1. the above conduct when submission to or rejection of such conduct is made either explicitly or implicitly a condition of a person's employment, or a basis for employment decisions affecting a person; or
 2. the above conduct when such conduct has the purpose or effect of unreasonably interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment.
- Sexual Harassment** does not include **Sexual Abuse and Molestation**.
- BB. **Wrongful Act** means:
1. with regard to Insuring Agreements I.A.1 and 1.A.2, any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by an **Insured Person** while acting in his or her capacity as such and on behalf of the **Public Entity**;
 2. with regard to Insuring Agreements I.B., any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by the **Public Entity**; or
 3. with regard to Insuring Agreement I.C:
 - a. solely with respect to **Claims** brought and maintained by or on behalf of any **Employee** or applicant for employment with the **Public Entity**, **Wrongful Act** means a **Wrongful Employment Practice** committed or attempted by the **Public Entity** or by any **Insured Person** in his or her capacity as such and on behalf of the **Public Entity**; or
 - b. with respect to all other **Claims**, **Wrongful Act** means only, or a violation of discrimination laws, including but not limited to, violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, military status, or a violation of a natural person's civil rights relating to such discrimination or **Sexual Harassment**, in either case, whether direct, indirect, intentional or unintentional, committed by an **Insured Person** in his or her capacity as such and on behalf of the **Public Entity**.
- CC. **Wrongful Employment Practice** means any actual or alleged:
1. wrongful dismissal or discharge or termination, whether actual or constructive;
 2. employment-related misrepresentation;
 3. any violation of employment discrimination laws anywhere in the world, including but not limited to violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, or military status;
 4. **Sexual Harassment** or unlawful workplace harassment;

5. wrongful deprivation of a career opportunity or wrongful demotion;
6. failure to employ or promote;
7. wrongful discipline;
8. **Retaliation**;
9. negligent evaluation;
10. employment-related libel, slander, defamation, humiliation, invasion of privacy, or the giving of negative or defamatory statements in connection with an **Employee** reference;
11. failure to grant tenure; and
12. with respect to paragraphs S.1 through S.11 above, inclusive, negligent hiring, retention, training or supervision; infliction of emotional distress or mental anguish; failure to provide or enforce adequate or consistent corporate policies and procedures; or violation of an individual's civil rights;

of any past, present or prospective full-time, part-time, seasonal and temporary **Employee** or volunteer or leased **Employee(s)** or applicant for employment of the **Public Entity**.

The foregoing definitions shall apply equally to the singular and plural forms of the respective words.

IV. EXCLUSIONS

Except as limited under Insuring Agreement I.D, **Public Entity** Crisis Management Coverage, the **Insurer** shall not be liable for **Damages** or **Claims Expenses** on account of any **Claim**:

- A. alleging, based upon, arising out of or attributable to any dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law by an **Insured** ("**Excluded Conduct**"); however, this exclusion shall not apply: (1) unless and until there is an adverse admission by, finding of fact, or final adjudication against any **Insured** as to such **Excluded Conduct**, at which time the **Insured** shall reimburse the **Insurer** for all **Damages** and **Claims Expenses** paid or incurred on account of such **Claim**; or (2) to any **Claim** alleging any **Wrongful Employment Practice**.
- B. alleging, based upon, arising out of or attributable to the gaining in fact of any profit, remuneration or advantage to which any **Insured** was not legally entitled; however, this exclusion shall not apply to any **Claim** alleging any **Wrongful Employment Practice**.
- C. seeking relief or redress in any form other than monetary damages, or **Claims Expenses** for a **Claim** seeking injunctive or other non-monetary relief. However, the **Insurer** shall defend such a **Claim** in accordance with Section II, Defense, subject to a **Policy Period** aggregate limit of liability of \$100,000. This limit shall be part of the Limit of Liability stated in Item 3 of the Declarations.
- D. alleging, based upon, arising out of or attributable to any:
 1. **Bodily Injury**, other than **Mental Distress** arising out of a **Wrongful Employment Practice**;
 2. **Property Damage**;
 3. **Personal Injury**, other than libel, slander or defamation in any form arising out of a **Wrongful Employment Practice**; or
 4. any allegation relating to the foregoing D.1, D.2 and D.3 that an **Insured** negligently employed, investigated, supervised or retained a person, or based on an alleged practice, custom or policy and including, without limitation, any allegation that the violation of a civil right caused or resulted from such **Damages**, **Claims Expenses** or **Claim**.
- E. alleging, based upon, arising out of or attributable to the operation of the laws, and principles of eminent domain, condemnation, inverse condemnation, temporary or permanent taking, adverse possession or dedication by adverse use.

- F. alleging, based upon, arising out of or attributable to strikes, riots or civil commotions;
- G. alleging, based upon, arising out of or attributable to the failure to effect or maintain any insurance or bond, which shall include, but not be limited to, insurance provided by self-insurance arrangements, pools, self-insurance trusts, captive insurance companies, retention groups, reciprocal exchanges or any other plan or agreement of risk transfer or assumption. However, this exclusion shall not apply to **Claims Expenses**.
- H. alleging, based upon, arising out of or attributable to:
1. the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**; or
 2. any direction or request that any **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so.
- I. alleging, based upon, arising out of or attributable to the planning, construction, maintenance, operation or use of any nuclear reactor, nuclear waste storage or disposal site or any other nuclear facility; the transportation of nuclear material; or any nuclear reaction or radiation, or radioactive contamination, regardless of its cause.
- J. brought by or on behalf of any **Insured**; provided, however, with respect to any **Claim** alleging any **Wrongful Employment Practice**, this exclusion shall only apply to cross-claims or counter-claims brought by one **Insured** against another **Insured**.
- K. alleging, based upon, arising out of or attributable to:
1. breach of any express, implied, actual or constructive contract, warranty, guarantee or promise. However, this subsection of this exclusion shall not apply to any **Claim** alleging any **Wrongful Employment Practice**; or
 2. any construction, architectural or engineering contracts and/or agreements or the actual or alleged liability assumed by the **Insured** under any express, implied, actual or constructive contract or agreement, unless such liability would have attached to the **Insured** even in the absence of such contract or agreement.
- L. alleging, based upon, arising out of or attributable to any misappropriation of any trade secret or infringement of patent, collective mark, certification mark, registered mark, service mark, trademark, trade dress, trade name, domain, title, slogan, copyright or service name.
- M. alleging, based upon, arising out of or attributable to the operation of or activities of any schools, hospitals, clinics, nursing homes or other health care operations, jails or detention facilities, law enforcement agencies or fire fighting authorities.
- N. alleging, based upon, arising out of or attributable to the rendering or failure to render:
1. medical services, including **Incidental Medical Malpractice**, or
 2. professional services provided by any lawyer, architect, engineer or accountant to any person or entity other than the **Public Entity**.
- O. alleging, based upon, arising out of or attributable to any **Insured's** activities as a trustee or fiduciary as respects any type of **Employee** benefit plan, including any pension, savings, or profit sharing plan or to any amounts or benefits due under any fringe benefit program, retirement program, incentive program, perquisite program, entitlement program or other benefits owed to any **Employee**, including, but not limited to any actual or alleged violation of the responsibilities, obligations or duties imposed by the **Employee Retirement Income Security Act of 1974**, any similar state or local laws, and any rules and regulations promulgated thereunder and amendments thereto.

- P. alleging, based upon, arising out of or attributable to the improper administration or collection of taxes, or loss that reflects any tax obligations.
- Q. alleging, based upon, arising out of or attributable to:
1. any prior or pending litigation or administrative or regulatory proceeding, or any U.S. Equal Employment Opportunity Commission or similar state, local or foreign agency proceeding or investigation, filed on or before the effective date of the first policy issued and continuously renewed by the **Insurer**, or the same or substantially the same **Wrongful Act**, fact, circumstance or situation underlying or alleged therein; or
 2. any other **Wrongful Act** whenever occurring which, together with a **Wrongful Act** underlying or alleged in such prior or pending proceeding, would constitute **Interrelated Wrongful Acts**.
- R. alleging, based upon, arising out of, or attributable to:
1. any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other policy of which this **Policy** is a renewal or replacement or which it succeeds in time; or
 2. any other **Wrongful Act** whenever occurring which, together with a **Wrongful Act** which has been the subject of such notice, would constitute **Interrelated Wrongful Acts**.
- S. alleging, based upon, arising out of or attributable to any **Wrongful Act** prior to the inception date of the first policy issued by the **Insurer** or any affiliate thereof, and continuously renewed and maintained, if, on or before such date, any **Insured** knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim**.
- T. solely with respect to any **Claim** arising out of a **Wrongful Employment Practice**:
1. alleging, based upon, arising out of or attributable to any violation of the responsibilities, obligations or duties imposed by any worker's compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law; However, this exclusion shall not apply to that part of any **Claim** for **Retaliation**;
 2. for an actual or alleged violation of: (1) the **Employee** Retirement Income Security Act of 1974 (except section 510 thereof); (2) the Fair Labor Standards Act (except the Equal Pay Act), (3) the National Labor Relations Act, (4) the Worker Adjustment and Retraining Notification Act, (5) the Consolidated Omnibus Budget Reconciliation Act, (6) the Occupational Safety and Health Act; or any similar federal, state or local laws, and any rules and regulations promulgated thereunder and amendments thereto anywhere in the world. However, this exclusion shall not apply to that part of any **Claim** for **Retaliation**;
 3. alleging, based upon, arising out of or attributable to any costs or liability incurred by any **Insured** to provide any reasonable accommodations required by, made as a result of, or to conform with the requirements of, the Americans With Disabilities Act of 1992, as amended, or any similar federal, state or local law, regulation or ordinance, including the modification of any building, property or facility to make it more accessible or accommodating to any disabled person; or
 4. alleging, based upon, arising out of, or attributable to improper payroll deductions or any **Claims** for unpaid wages or overtime pay for hours actually worked or labor actually performed by any **Employee** of a **Public Entity**, or any violation of any federal state, local or foreign statutory law or common law that governs the same topic or subject, and any rules, regulations and amendments thereto. However, this exclusion shall not apply to that part of any **Claim** for **Retaliation**.

The **Wrongful Act** of any **Insured Person** shall not be imputed to any other **Insured Person** for the purpose of determining the applicability of Exclusions IV.A. and IV.B. above.

V. CRISIS MANAGEMENT COVERAGE PROVISIONS

- A. There shall be no Retention applicable to **Crisis Management Expenses** and the **Company** shall pay such **Crisis Management Expenses** from the first dollar subject to all other terms and conditions of this policy, including the **Policy** limit.
- B. An actual or anticipated **Crisis Event** shall be reported to the **Company** as soon as practicable, but in no event later than thirty (30) days after the **Public Entity** first incurs **Crisis Management Expenses** for which coverage will be requested under this **Policy**.

VI. ESTATES, LEGAL REPRESENTATIVES AND SPOUSES

The estates, heirs, legal representatives, assigns, spouses and legally recognized domestic partners of **Insureds** shall be considered **Insureds** under this **Policy**; but coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and legally recognized domestic partners only for a **Claim** arising solely out of their status as such and, in the case of a spouse or legally recognized domestic partner, where the **Claim** seeks damages from marital community property, jointly held property or property transferred from a natural person **Insured** to the spouse or legally recognized domestic partner. No coverage is provided for any **Wrongful Act** of an estate, heir, legal representative, assign, spouse or legally recognized domestic partner. All of the terms and conditions of this **Policy** including, without limitation, the Retention applicable to **Damages** and **Claims Expenses** incurred by **Insureds** shown in Item 4 of the Declarations, shall also apply to **Damages** and **Claims Expenses** incurred by such estates, heirs, legal representatives, assigns, spouses and legally recognized domestic partners.

VII. EXTENDED REPORTING PERIODS

If the **Insurer** terminates or does not renew this **Policy** (other than for failure to pay a premium when due), or if the **Public Entity** terminates or does not renew this **Policy** and does not obtain replacement coverage as of the effective date of such cancellation or non-renewal, the **Public Entity** shall have the right, upon payment of the additional premium described below, to a continuation of the coverage granted by this **Policy** for at least one **Extended Reporting Period** as follows:

A. Automatic **Extended Reporting Period**

The **Public Entity** shall have continued coverage granted by this **Policy** for a period of 60 days following the effective date of such termination or nonrenewal, but only for **Claims** first made during such 60 days and arising from **Wrongful Acts** taking place prior to the effective date of such termination or nonrenewal. This Automatic **Extended Reporting Period** shall immediately expire upon the purchase of replacement coverage by the **Public Entity**.

B. Optional **Extended Reporting Period**

The **Public Entity** shall have the right, upon payment of the additional premium set forth in Item 7A of the Declarations, to an Optional **Extended Reporting Period**, for the period set forth in Item 7B of the Declarations following the effective date of such cancellation or nonrenewal, but only for **Claims** first made during such Optional **Extended Reporting Period** and arising from **Wrongful Acts** taking place prior to the effective date of such termination or nonrenewal.

This right to continue coverage shall lapse unless written notice of such election is given by the **Public Entity** to the **Insurer**, and the **Insurer** receives payment of the additional premium, within 30 days following the effective date of termination or nonrenewal.

The first 60 days of the Optional **Extended Reporting Period**, if it becomes effective, shall run concurrently with the Automatic **Extended Reporting Period**.

- C. The **Insurer** shall give the **Public Entity** notice of the premium due for the **Extended Reporting Period** as soon as practicable following the date the **Public Entity** gives such notice of such election, and such

premium shall be paid by the **Public Entity** to the **Insurer** within 10 days following the date of such notice by the **Insurer** of the premium due. The **Extended Reporting Period** is not cancelable and the entire premium for the **Extended Reporting Period** shall be deemed fully earned and non-refundable upon payment.

- D. The **Extended Reporting Period**, if elected, shall be part of and not in addition to the Limit of Liability for the immediately preceding **Policy Period**. The purchase of the **Extended Reporting Period** shall not increase or reinstate the Limit of Liability, which shall be the maximum liability of the **Insurer** for the **Policy Period** and **Extended Reporting Period**, combined.
- E. A change in **Policy** terms, conditions, exclusions and/or premiums shall not be considered a nonrenewal for purposes of triggering the rights to the Automatic or Optional **Extended Reporting Period**.

VIII. LIMITS OF LIABILITY

A. Payment of **Claims Expenses** without reduction of the Limit of Liability

- 1. The **Insurer** shall pay **Claims Expenses** in excess of the applicable Retention and up to an aggregate amount equal to the Limit of Liability stated in Item 3 of the Declaration without reduction of the applicable Limit of Liability. The total amount of such **Claims Expense** payments by the **Insurer** shall be capped at the amount of the Limit of Liability, and is not on a per **Claim** basis.
- 2. Once the **Insurer** has paid the amount set forth in Item 3. of the Declarations in aggregate **Claims Expenses** arising from or relating to any and all matters, all further payments by the **Insurer** of **Claims Expenses** shall reduce the applicable Limit of Liability.

B. Limit of Liability

- 1. Except as otherwise stated in section VIII.A, the **Insurer's** maximum liability for the sum of all **Damages** and all **Claims Expenses** because of all **Claims**, (including all **Claims** alleging any **Interrelated Wrongful Acts**) first made and reported during the **Policy Period** shall never exceed the amount stated in Item 3 of the Declarations.
- 2. All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of the **Insureds** shall be deemed to be one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**. All **Damages** and all **Claims Expenses** resulting from a single **Claim** shall be deemed a single **Damage** and **Claims Expense** and shall be allocable to the **Policy** in effect on the date the **Claim** is first made, regardless or whether such date is before or during the **Policy Period**.
- 3. Except as otherwise stated in section VIII.A, any payment of **Damages** and/or **Claims Expenses** by the **Insurer** will reduce the Limit of Liability stated in Item 3 of the Declarations.
- 4. The **Insurer** is entitled to pay **Damages** and **Claims Expenses** as they become due and payable by the **Insureds**, without consideration of other future payment obligations.
- 5. Once the Limit of Liability has been exhausted by payments of any **Damages** (regardless of whether the payment by the **Insurer** of **Claims Expenses** under section VIII.A. has exhausted, reached or exceeded the amount set forth in Item 3 of the Declarations), the obligations of the **Insurer** under this **Policy** shall be completely fulfilled and extinguished.
- 6. The **Crisis Management Fund** is the **Insurer's** maximum liability for all **Crisis Management Expenses** arising from any and all **Crisis Events** occurring during the **Policy Period**. This limit shall be the **Insurer's** maximum liability under this policy regardless of the number of **Crisis Events** reported during the **Policy Period**. The **Insurer's** obligation to pay **Crisis Management Expense** terminates and ends upon the exhaustion of the **Crisis Management Fund**. The **Crisis Management Fund** shall be in addition to the aggregate Limit of Liability set forth in Item 3 of the Declarations.

IX. RETENTION

- A. The liability of the **Insurer** shall apply only to that part of **Damages** and **Claims Expenses** which are in excess of the applicable Retention amount shown in Item 4 of the Declarations. Such Retention shall be borne uninsured by the **Public Entity** and at the risk of all **Insureds**.
- B. A single Retention amount shall apply to **Damages** and **Claims Expenses** arising from all **Claims** alleging **Interrelated Wrongful Acts**.
- C. If different parts of a single **Claim** are subject to different Retentions, the applicable Retention shall be applied separately to each part of the **Damages** and **Claims Expenses**, but the sum of such Retentions shall not exceed the largest applicable Retention.

X. NOTICE

For coverage under this **Policy** (other than coverage for a **Crisis Event**):

- A. The **Insured** shall, as a condition precedent to their rights under this **Policy**, give to the **Insurer** written notice of any **Claim** as soon as practicable, but in no event later than 30 days after: (1) the end of the **Policy Period**, or (2) with respect to **Claims** first made during any applicable Automatic or Optional **Extended Reporting Period**, the end of such Automatic or Optional **Extended Reporting Period**.
- B. If, during the **Policy Period**, any **Insured** becomes aware of any specific **Wrongful Act** which may reasonably give rise to a future **Claim** covered under this **Policy**, and if the **Insureds** give written notice to the **Insurer** during the **Policy Period**, the Automatic **Extended Reporting Period**, or, if elected, the Optional **Extended Reporting Period** of:

1. the identity of the potential claimants;
2. a description of the anticipated **Wrongful Act** allegations;
3. the identity of the **Insureds** allegedly involved;
4. the circumstances by which the **Insureds** first became aware of the **Wrongful Act**;
5. the consequences which have resulted or may result; and
6. the nature of the potential monetary damages;

then any **Claim** which arises out of such **Wrongful Act** shall be deemed to have been first made at the time such written notice was received by the **Insurer**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.

- C. All notices under any provision of this **Policy** shall be in writing and given by prepaid express courier, certified mail or facsimile transmission properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Public Entity** at the address shown in Item 1 of the Declarations. Notice to the **Insurer** of any **Claim** or **Wrongful Act** shall be given to the **Insurer** at the address set forth in Item 5A of the Declarations. All other notices to the **Insurer** under this **Policy** shall be given to the **Insurer** at the address set forth in Item 5B of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee, or one day following the date such notice is sent, whichever is earlier.

XI. PRESUMPTIVE INDEMNIFICATION

- A. The **Public Entity** agrees to indemnify the **Insured Persons** to the fullest extent permitted by law, taking all steps necessary or advisable in furtherance thereof, including the making in good faith of any application for court approval. The **Public Entity** further agrees to advance **Defense Costs** actually and reasonably incurred by any **Insured Person** in defending any threatened, pending or contemplated action, suit or proceeding prior to a final disposition of any such action, suit or proceeding and shall not require any determination or adjudication, interim or final, of the entitlement of the **Insured Person** to indemnification, where permitted by law to do so. The financial ability of any **Insured Person** to make repayment shall not be a prerequisite to the making of such an advance, and the right to receive advancement of **Claims Expenses** herein is a contractual right. The agreements contained in this paragraph are binding upon the **Public Entity** and enforceable by the **Insurer** or the **Insured Persons**.
- B. Notwithstanding anything in this section to the contrary, the **Public Entity's** indemnification obligations under this section shall not apply in the event the **Public Entity** is neither permitted nor required to grant such indemnification either because of the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Public Entity**, or because of the **Public Entity** becoming a debtor-in-possession.

XII. OTHER INSURANCE

If any **Damages** or **Claims Expenses** covered under this **Policy** are covered under any other valid and collectible insurance, then this **Policy** shall cover such **Damages** or **Claims Expenses**, subject to its terms and conditions, only to the extent that the amount of such **Damages** or **Claims Expenses** are in excess of the amount of such other insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided by this **Policy**.

XIII. REPRESENTATIONS

- A. The **Insureds** represent and acknowledge that the statements and information contained in the **Application** are true and accurate and:
1. are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy**; and
 2. shall be deemed material to the acceptance of this risk or the hazard assumed by the **Insurer** under this **Policy**.
- B. It is understood and agreed that this **Policy** is issued in reliance upon the truth and accuracy of such representations.
- C. It is understood and agreed that if such representations or such information are not true, accurate and complete, this **Policy** shall be null and void in its entirety and the **Insurer** shall have no liability hereunder as to: (1) any **Insured Person** who knew the facts misrepresented or omitted, whether or not such **Insured Person** knew of the **Application** or this **Policy**; and (2) the **Public Entity**. For purposes of this subsection C, the knowledge of any **Insured Person** shall not be imputed to any other **Insured Person**.

XIV. TERMINATION OF THE POLICY

- A. This **Policy** shall terminate at the earliest of the following times:
1. the effective date of termination specified in a prior written notice by the **Public Entity** to the **Insurer**;
 2. 60 days after receipt by the **Public Entity** of a written notice of termination from the **Insurer**;
 3. 10 days after receipt by the **Public Entity** of a written notice of termination from the **Insurer** for failure to pay a premium when due, unless the premium is paid within such 10 day period;

4. upon expiration of the **Policy Period** as set forth in Item 2 of the Declarations; or
 5. at such other time as may be agreed upon by the **Insurer** and the **Public Entity**.
- B. If the **Policy** is terminated by the **Public Entity**, or by the **Insurer**, the **Insurer** shall refund the unearned premium computed *pro rata*. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

XV. TERRITORY AND VALUATION

- A. All premiums, limits, retentions, **Damages, Claims Expenses** and other amounts under this **Policy** are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Damages** and **Claims Expenses** under this **Policy** is stated in a currency other than United States of America dollars, payment under this **Policy** shall be made in United States dollars at the applicable rate of exchange as published in *The Wall Street Journal* as of the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Damages** or **Claims Expenses** is due, respectively or if not published on such date, the next date of publication of *The Wall Street Journal*.
- B. Coverage under this **Policy** shall extend to **Wrongful Acts** taking place or **Claims** made or **Damages** or **Claims Expenses** sustained anywhere in the world, provided the **Claim** is made within the jurisdiction of and subject to the laws of the United States of America, Canada or their respective territories or possessions.

XVI. SUBROGATION

In the event of any payment under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the rights of recovery of the **Insureds**. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the **Insurer** effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insureds**.

XVII. ACTION AGAINST THE INSURER AND BANKRUPTCY

Except as set forth below in Section XX, Alternative Dispute Resolution, no action shall lie against the **Insurer**. No person or organization shall have any right under this **Policy** to join the **Insurer** as a party to any action against any **Insured** to determine the liability of the **Insured** nor shall the **Insurer** be impleaded by any **Insured** or its legal representatives. Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the **Insurer** of its obligations nor deprive the **Insurer** of its rights or defenses under this **Policy**.

XVIII. AUTHORIZATION CLAUSE

By the acceptance of this **Policy**, the **Public Entity** agrees to act on behalf of all **Insureds** with respect to the giving and receiving of notice of **Claim**, the giving or receiving of notice of termination or non renewal, the payment of premiums and the receiving of any premiums that may become due under this **Policy**, the agreement to and acceptance of endorsements, consenting to any settlement, exercising the right to the **Extended Reporting Period**, and the giving or receiving of any other notice provided for in this **Policy**, and all **Insureds** agree that the **Public Entity** shall so act on their behalf.

XIX. ALTERATION, ASSIGNMENT AND HEADINGS

- A. Notice to any agent or knowledge possessed by any agent or by any other person shall not affect a waiver or a change in any part of this **Policy** nor prevent the **Insurer** from asserting any right under the terms of this **Policy**.

- B. No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is signed by an authorized representative of the **Insurer**.
- C. The titles and headings to the various parts, sections, subsections and endorsements of the **Policy** are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such parts, sections, subsections or endorsements.

XX. ALTERNATIVE DISPUTE RESOLUTION

The **Insureds** and the **Insurer** shall submit any dispute or controversy arising out of or relating to this **Policy** or the breach, termination or invalidity thereof to the alternative dispute resolution ("ADR") process set forth in this section.

Either an **Insured** or the **Insurer** may elect the type of ADR process discussed below; provided, however, that the **Insured** shall have the right to reject the choice by the **Insurer** of the type of ADR process at any time prior to its commencement, in which case the choice by the **Insured** of ADR process shall control.

There shall be two choices of ADR process:

- A. non-binding mediation administered by any mediation facility to which the **Insurer** and the **Insured** mutually agree, in which the **Insured** and the **Insurer** shall try in good faith to settle the dispute by mediation in accordance with the then-prevailing commercial mediation rules of the mediation facility; or
- B. arbitration submitted to any arbitration facility to which the **Insured** and the **Insurer** mutually agree, in which the arbitration panel shall consist of three disinterested individuals.

In either mediation or arbitration, the mediator or arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. In the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties, and the award of the arbitrators shall not include attorneys' fees or other costs.

In the event of mediation, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until at least 60 days after the date the mediation shall be deemed concluded or terminated. In all events, each party shall share equally the expenses of the ADR process.

Either ADR process may be commenced in New York, New York or in the state indicated in Item 1 of the Declarations as the principal address of the **Public Entity**. The **Public Entity** shall act on behalf of each and every **Insured** in connection with any ADR process under this section.

XXI. INTERPRETATION

The terms and conditions of this **Policy** shall be interpreted and construed in an evenhanded fashion as between the parties. If the language of this **Policy** is deemed to be ambiguous or otherwise unclear, the issue shall be resolved in the manner most consistent with the relevant terms and conditions, without regard to authorship of the language, without any presumption or arbitrary interpretation or construction in favor of either the **Insureds** or the **Insurer** and without reference to the reasonable expectations of either the **Insureds** or the **Insurer**.

Illinois Union

INSURANCE COMPANY

525 West Monroe Street, Suite 700
Chicago, IL 60661

NOTICE

POLICY NO. EON G23632913 006

NAME OF INSURED: Hawaii Employer-Union Health Benefits Trust Fund

ADDRESS: 201 Merchant Street
Suite 1520
Honolulu, HI 96813

We are pleased to enclose your policy for this account.

Please be advised that by binding this risk with the above referenced Surplus Lines Insurance Company, you agree that as the Surplus Lines Broker responsible for the placement of this insurance policy, it is your obligation to comply with all States Surplus Lines Laws including completion of any declarations/affidavits that must be filed as well as payment of any and all Surplus Lines taxes that must be the remitted to the State(s). We will look to you for indemnification if controlling Surplus Lines Laws are violated by you as the Surplus Lines broker responsible for the placement.

You further confirm that any applicable state requirement concerning a diligent search for coverage by admitted carriers has been fulfilled in accordance with state law.

Thank you for this placement and your regulatory compliance.

Date: 12/22/2011



ACE USA

- ☒ Illinois Union Insurance Company
☐ INA Surplus Insurance Company
☐ Westchester Surplus Lines Insurance Company

Attached To Policy No. **G23632913 006**

Named Insured **Hawaii Employer-Union Health Benefits Trust Fund**

Effective Date **12/15/2011**

SURPLUS LINES NOTIFICATION

THIS CONTRACT IS A SURPLUS LINES COVERAGE UNDER THE INSURANCE LAWS OF THE STATE OF HAWAII.

NOTHING HEREIN CONTAINED SHALL BE HELD TO VARY, ALTER, WAIVE OR EXTEND ANY OF THE TERMS, CONDITIONS, OR LIMITATIONS OF THE POLICY TO WHICH THIS ENDORSEMENT IS ATTACHED OTHER THAN AS ABOVE STATED.

XS-1U93e (02/2001)



ACE EPL HELPLINE

ace usa

ACE EPL HELPLINE Services:

Congratulations! Your recent purchase/renewal of Employment Practices Liability (EPL) Insurance with ACE Professional Risk provides you with access to the ACE EPL HELPLINE interactive loss control resource **at no additional cost!** Employment Law Attorneys are available to answer your organization's specific questions from hiring and termination situations, to FMLA, ADA, exempt/non-exempt, harassment, discrimination, and more...



***You are already registered to call and email
Employment Law Attorneys directly!***

(Activate your account per the instructions below)

What services do you now have access to?

- ***Toll-Free Employer HELPLINE*** for personalized attention to your specific HR/Employment Law questions. A response no later than the end of the next business day is provided on all questions!
- ***Online Resource Website:*** www.aceephelpline.com, (including online access to Employment Law Attorneys), current Human Resource information, sample HR policies and more!
- ***Monthly HR Express Updates and HR Alerts*** keep your organization informed of continuously changing state and federal workplace regulations... direct to your email box!

ACT NOW to activate/renew your account:

Contact a HELPLINE Relationship Manager toll-free at 1-877-568-6655 for your unique access information

-or-

Please complete this section and fax back to us toll-free at 1-877-705-3678 to schedule your enrollment call!

Policy Number: _____
Company (required): _____
Contact Person: _____

When are you available?
Date _____
Time _____
<i>Circle One:</i> EST CST MST PST
Phone (required): (_____) _____



U.S. Treasury Department's Office Of Foreign Assets Control ("OFAC") Advisory Notice to Policyholders

This Policyholder Notice shall not be construed as part of your policy and no coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous:

- Foreign agents;
- Front organizations;
- Terrorists;
- Terrorist organizations; and
- Narcotics traffickers;

as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's web site – <http://www.treas.gov/ofac>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.



ACE Producer Compensation Practices & Policies

ACE believes that policyholders should have access to information about ACE's practices and policies related to the payment of compensation to brokers and independent agents. You can obtain that information by accessing our website at <http://www.aceproducercompensation.com> or by calling the following toll-free telephone number: 1-866-512-2862.

THE ONLY SIGNATURES APPLICABLE TO THIS POLICY ARE THOSE REPRESENTING THE COMPANY NAMED ON THE FIRST PAGE OF THE DECLARATIONS.

Named Insured Hawaii Employer-Union Health Benefits Trust Fund			Endorsement Number 1
Policy Symbol EON	Policy Number G23632913 006	Policy Period 12/15/2011 to 12/15/2012	Effective Date of Endorsement 12/15/2011
Issued By (Name of Insurance Company) Illinois Union Insurance Company			

Signatures Endorsement

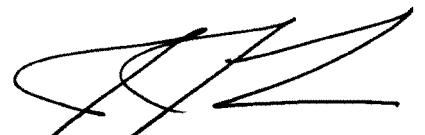
By signing and delivering the policy to you, we state that it is a valid contract when countersigned by our authorized representative.

ILLINOIS UNION INSURANCE COMPANY (A stock company)
525 W. Monroe Street, Suite 700, Chicago, Illinois 60661

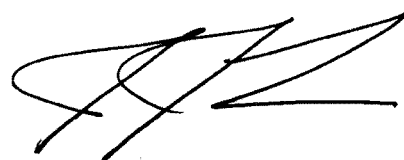
WESTCHESTER SURPLUS LINES INSURANCE COMPANY (A stock company)
500 Colonial Center Parkway, Suite 200, Roswell, GA 30076



CARMINE A. GIGANTI, Secretary



JOHN J. LUPICA, President



Authorized Representative

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured Hawaii Employer-Union Health Benefits Trust Fund			Endorsement Number 2
Policy Symbol EON	Policy Number G23632913 006	Policy Period 12/15/2011 to 12/15/2012	Effective Date of Endorsement 12/15/2011
Issued By (Name of Insurance Company) Illinois Union Insurance Company			

Service Of Suit Endorsement

Information about service of suits upon the company is given below. Service of process of suits against the company may be made upon the following person, or another person the company may designate:

Saverio Rocca, Assistant General Counsel
ACE Group of Insurance Companies
436 Walnut Street
Philadelphia, PA 19106-3703

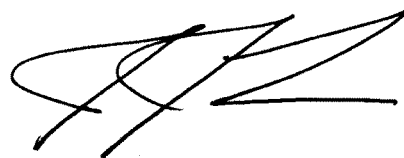
The person named above is authorized and directed to accept service of process on the company's behalf in any action, suit or proceeding instituted against the company. If the insured requests, the company will give the insured a written promise that a general appearance will be entered on the company's behalf if a suit is brought.

If the insured requests, the company will submit to the jurisdiction of any court of competent jurisdiction. The company will accept the final decision of that court or any Appellate Court in the event of an appeal. However, nothing in this endorsement constitutes a waiver of company's right to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States.

The law of some jurisdictions of the United States of America requires that the Superintendent, Commissioner or Director of Insurance (or their successor in office) be designated as the company's agent for service of process. In these jurisdictions, the company designates the Director of Insurance as the company's true and lawful attorney upon whom service of process on the company's behalf may be made. The company also authorizes the Director of Insurance to mail process received on the company's behalf to the company person named above.

If the insured is a resident of Canada, the insured may also serve suit upon the company by serving the government official designated by the law of the insured's province.

NOTHING HEREIN CONTAINED SHALL BE HELD TO VARY, ALTER, WAIVE OR EXTEND ANY OF THE TERMS, CONDITIONS, OR LIMITATIONS OF THE POLICY TO WHICH THIS ENDORSEMENT IS ATTACHED OTHER THAN AS ABOVE STATED.



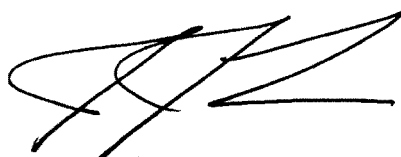
Authorized Representative

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured Hawaii Employer-Union Health Benefits Trust Fund			Endorsement Number 3
Policy Symbol EON	Policy Number G23632913 006	Policy Period 12/15/2011 to 12/15/2012	Effective Date of Endorsement 12/15/2011
Issued By (Name of Insurance Company) Illinois Union Insurance Company			

Trade Or Economic Sanctions Endorsement

This insurance does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit us from providing insurance, including, but not limited to, the payment of claims. All other terms and conditions of the policy remain unchanged.



Authorized Agent

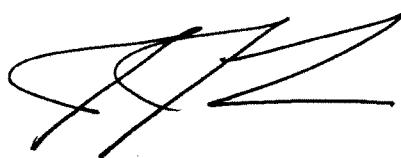
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured Hawaii Employer-Union Health Benefits Trust Fund			Endorsement Number 4
Policy Symbol EON	Policy Number G23632913 006	Policy Period 12/15/2011 to 12/15/2012	Effective Date of Endorsement 12/15/2011
Issued By (Name of Insurance Company) Illinois Union Insurance Company			

Non-Monetary Damages – Variable Sublimit Endorsement

It is agreed that Section IV, Exclusions, subsection C is amended by deleting "\$100,000" and inserting "\$250,000".

All other terms and conditions of this **Policy** remain unchanged.



Authorized Representative

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

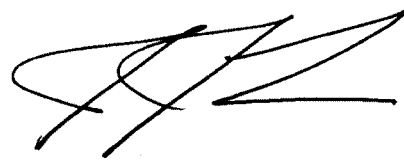
Named Insured Hawaii Employer-Union Health Benefits Trust Fund			Endorsement Number 5
Policy Symbol EON	Policy Number G23632913 006	Policy Period 12/15/2011 to 12/15/2012	Effective Date of Endorsement 12/15/2011
Issued By (Name of Insurance Company) Illinois Union Insurance Company			

Exclusion B Amended Endorsement

It is agreed that Section IV, Exclusions, subsection B, is amended by adding the following:

Further, this exclusion shall not apply to **Claims Expenses** or the **Company's** duty to defend such **Claim** unless and until there is a final adjudication against any **Insured** as to such conduct, at which time the **Insured** shall reimburse the **Company** for all **Claims Expenses** paid on account of such **Claim**.

All other terms and conditions of this **Policy** remain unchanged.



Authorized Representative

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

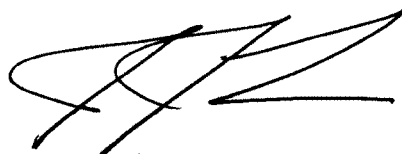
Named Insured Hawaii Employer-Union Health Benefits Trust Fund			Endorsement Number 6
Policy Symbol EON	Policy Number G23632913 006	Policy Period 12/15/2011 to 12/15/2012	Effective Date of Endorsement 12/15/2011
Issued By (Name of Insurance Company) Illinois Union Insurance Company			

Notice Amended Endorsement

It is agreed that Section X, Notice, subsection A, is deleted in its entirety and the following is inserted:

- A. The **Insured** shall, as a condition precedent to their rights under this **Policy**, give to the **Insurer** written notice of any **Claim** as soon as practicable after the Administrator of the **Insured** or the Hawaii Attorney General, or the equivalent positions within the **Insured's** organization, or any one of such individual's direct professional reports, is first aware of such **Claim**, but in no event later than 60 days after the later of the end of the **Policy Period**, the Automatic **Extended Reporting Period**, or, if elected, the Optional **Extended Reporting Period**.

All other terms and conditions of this **Policy** remain unchanged.



Authorized Representative

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

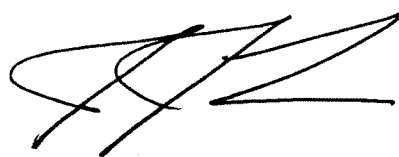
Named Insured Hawaii Employer-Union Health Benefits Trust Fund			Endorsement Number 7
Policy Symbol EON	Policy Number G23632913 006	Policy Period 12/15/2011 to 12/15/2012	Effective Date of Endorsement 12/15/2011
Issued By (Name of Insurance Company) Illinois Union Insurance Company			

Claim Amended Endorsement

It is agreed that Section III, Definitions, subsection D, the definition of **Claim**, is amended by adding the following:

Claim also means a criminal proceeding against any **Insured** commenced by a return of an indictment, information, or similar document, or receipt or filing of a notice of charges;

All other terms and conditions of this **Policy** remain unchanged.



Authorized Representative

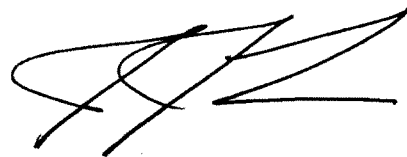
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured Hawaii Employer-Union Health Benefits Trust Fund			Endorsement Number 8
Policy Symbol EON	Policy Number G23632913 006	Policy Period 12/15/2011 to 12/15/2012	Effective Date of Endorsement 12/15/2011
Issued By (Name of Insurance Company) Illinois Union Insurance Company			

Optional ERP Amended – Premium Due Endorsement

It is agreed that Section VII, **Extended Reporting Periods**, subsection C, is amended by deleting the phrase "10 days" and inserting the phrase "30 days".

All other terms and conditions of this **Policy** remain unchanged.



Authorized Representative

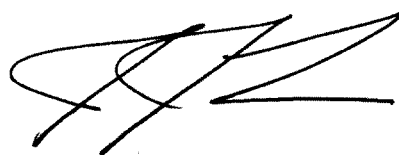
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured Hawaii Employer-Union Health Benefits Trust Fund			Endorsement Number 9
Policy Symbol EON	Policy Number G23632913 006	Policy Period 12/15/2011 to 12/15/2012	Effective Date of Endorsement 12/15/2011
Issued By (Name of Insurance Company) Illinois Union Insurance Company			

Exclusion A Amended Endorsement

It is agreed that Section IV, Exclusions, subsection A, is amended by deleting the phrase "an adverse admission by, finding of fact, or final adjudication" and inserting the phrase "a final adjudication".

All other terms and conditions of this **Policy** remain unchanged.



Authorized Representative

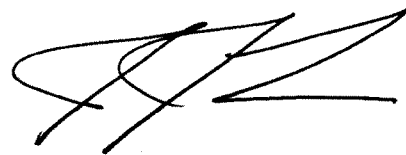
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured Hawaii Employer-Union Health Benefits Trust Fund			Endorsement Number 10
Policy Symbol EON	Policy Number G23632913 006	Policy Period 12/15/2011 to 12/15/2012	Effective Date of Endorsement 12/15/2011
Issued By (Name of Insurance Company) Illinois Union Insurance Company			

Arbitration – Nonbinding Endorsement

It is agreed that Section XX, Alternative Dispute Resolution, is amended by deleting the phrase "the decision of the arbitrators shall be final and binding" and inserting the phrase "the decision of the arbitrators shall not be final and binding".

All other terms and conditions of this **Policy** remain unchanged.



Authorized Representative

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured Hawaii Employer-Union Health Benefits Trust Fund			Endorsement Number 11
Policy Symbol EON	Policy Number G23632913 006	Policy Period 12/15/2011 to 12/15/2012	Effective Date of Endorsement 12/15/2011
Issued By (Name of Insurance Company) Illinois Union Insurance Company			

**Notice of Cancellation - Non-Cancelable except for Non-Payment of Premium
Endorsement**

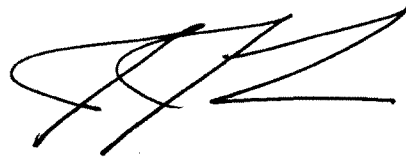
It is agreed that Section XIV, Termination of **Policy**, subsection A, is deleted in its entirety and replaced with the following:

XIV. TERMINATION OF THE POLICY

A. This **Policy** shall terminate at the earliest of the following times:

1. 10 days after receipt by the **Public Entity** of a written notice of termination from the **Insurer** for failure to pay a premium when due, unless the premium is paid within such 10 day period;
2. upon expiration of the **Policy Period** as set forth in Item 2 of the Declarations; or
3. at such other time as may be agreed upon by the **Insurer** and the **Public Entity**.

All other terms and conditions of this **Policy** remain unchanged.



Authorized Representative

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured Hawaii Employer-Union Health Benefits Trust Fund			Endorsement Number 12
Policy Symbol EON	Policy Number G23632913 006	Policy Period 12/15/2011 to 12/15/2012	Effective Date of Endorsement 12/15/2011
Issued By (Name of Insurance Company) Illinois Union Insurance Company			

Defense Amended – Amend Post Settlement Proposal Defense Percentages; Settlement Within Retention Endorsement

It is agreed that Section II, Defense, subsection B, is amended as follows:

1. The phrase "50%" in line 7 and line 9 is deleted and the following percentages for each phrase are inserted, respectively:

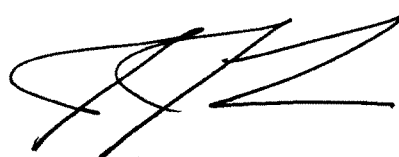
70% in line 7

30% in line 9

2. The following is added to the subsection:

- Subject to all other terms and conditions of the **Policy**, the **Public Entity** may settle any **Claim** to which this insurance applies provided that the **Public Entity** does so: (1) on behalf of all **Insureds** with prejudice; and (2) without incurring any **Claims Expenses** and/or **Damages** in excess of the Retention.

All other terms and conditions of this **Policy** remain unchanged.



Authorized Representative

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

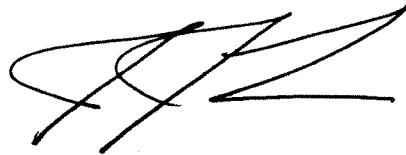
Named Insured Hawaii Employer-Union Health Benefits Trust Fund			Endorsement Number 13
Policy Symbol EON	Policy Number G23632913 006	Policy Period 12/15/2011 to 12/15/2012	Effective Date of Endorsement 12/15/2011
Issued By (Name of Insurance Company) Illinois Union Insurance Company			

Definition of Employee Amended – Independent Contractors Endorsement

It is agreed that Section III, Definitions, subsection L, the definition of **Employee**, is amended by adding the following:

- **Employee** also means independent contractors of the **Public Entity** who are natural persons, but only with respect to the commission of a **Wrongful Act** within the scope of such person's duties performed on behalf of and at the direction of the **Public Entity**.

All other terms and conditions of this **Policy** remain unchanged.



Authorized Representative

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

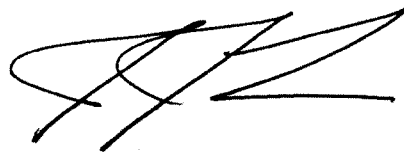
Named Insured Hawaii Employer-Union Health Benefits Trust Fund			Endorsement Number 14
Policy Symbol EON	Policy Number G23632913 006	Policy Period 12/15/2011 to 12/15/2012	Effective Date of Endorsement 12/15/2011
Issued By (Name of Insurance Company) Illinois Union Insurance Company			

Territory Clause Amended Endorsement

It is agreed that Section XV, Territory and Valuation, subsection B is deleted in its entirety and the following is inserted:

- B. Coverage under this **Policy** shall extend to **Wrongful Acts** taking place and **Claims** made anywhere in the world.

All other terms and conditions of this **Policy** remain unchanged.



Authorized Representative

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured Hawaii Employer-Union Health Benefits Trust Fund			Endorsement Number 15
Policy Symbol EON	Policy Number G23632913 006	Policy Period 12/15/2011 to 12/15/2012	Effective Date of Endorsement 12/15/2011
Issued By (Name of Insurance Company) Illinois Union Insurance Company			

Exclusion J Amended Endorsement

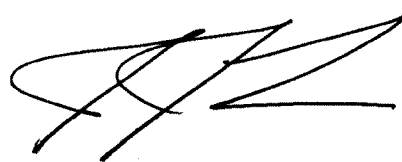
It is agreed that Section IV, Exclusions, subsection J is deleted in its entirety and replaced with the following:

- J. brought by or on behalf or in the right of any **Insured**, however this exclusion shall not apply to:
1. any derivative **Claim** made on behalf of the **Public Entity** by a member, an attorney general or any other such representative party if such action is brought and maintained totally independently of and totally without the solicitation, assistance, active participation or intervention of any **Insured Person** or the **Organization**; provided, however, that **Whistleblower Conduct** by an **Insured Person**, other than a director or equivalent position, shall not be considered solicitation, assistance, active participation, or intervention of an **Insured Person**.
 2. any **Claim** that is brought or maintained by any bankruptcy or insolvency trustee or bankruptcy appointed representative of the **Public Entity**, or receiver, examiner, liquidator or similar official for the **Public Entity**.

Further, with respect to any **Claim** alleging any **Wrongful Employment Practice**, this exclusion shall only apply to cross-claims or counter-claims brought by one **Insured** against another **Insured**.

For the purpose of this endorsement, **Whistleblower Conduct** means any activity set forth in Sec. 1514A(a), engaged in by a whistleblower with a Federal regulatory or law enforcement agency, Member of Congress or any committee of Congress, or person with supervisory authority over the employee, or an enforcement action by the whistleblower set forth in Sec. 1514A (b).

All other terms and conditions of this **Policy** remain unchanged.



Authorized Representative

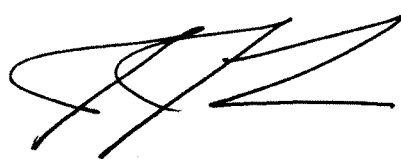
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured Hawaii Employer-Union Health Benefits Trust Fund			Endorsement Number 16
Policy Symbol EON	Policy Number G23632913 006	Policy Period 12/15/2011 to 12/15/2012	Effective Date of Endorsement 12/15/2011
Issued By (Name of Insurance Company) Illinois Union Insurance Company			

Representations Amended Endorsement

It is agreed that Section XIII, Representations, subsection A.2., is deleted in its entirety.

All other terms and conditions of this **Policy** remain unchanged.



Authorized Representative

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured Hawaii Employer-Union Health Benefits Trust Fund			Endorsement Number 17
Policy Symbol EON	Policy Number G23632913 006	Policy Period 12/15/2011 to 12/15/2012	Effective Date of Endorsement 12/15/2011
Issued By (Name of Insurance Company) Illinois Union Insurance Company			

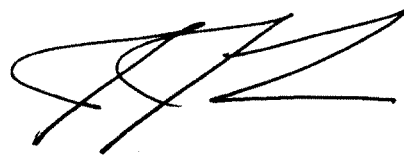
Exclusion D Amended Endorsement

It is agreed that Section IV, Exclusions, subsection D, is deleted in its entirety and the following is inserted:

D. alleging, based upon, arising out of or attributable to any:

1. **Bodily Injury**, other than mental injury, mental anguish, mental tension or emotional distress arising out of a **Wrongful Employment Practice**;
2. **Property Damage**;
3. **Personal Injury**, other than libel, slander or defamation in any form arising out of a **Wrongful Employment Practice**;

All other terms and conditions of this **Policy** remain unchanged.



Authorized Representative

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured Hawaii Employer-Union Health Benefits Trust Fund			Endorsement Number 18
Policy Symbol EON	Policy Number G23632913 006	Policy Period 12/15/2011 to 12/15/2012	Effective Date of Endorsement 12/15/2011
Issued By (Name of Insurance Company) Illinois Union Insurance Company			

**DISCLOSURE PURSUANT TO TERRORISM RISK
INSURANCE ACT**

Disclosure Of Premium

In accordance with the federal Terrorism Risk Insurance Act, we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to coverage for terrorist acts certified under the Terrorism Risk Insurance Act. The portion of your premium attributable to such coverage is shown in this endorsement or in the policy Declarations.

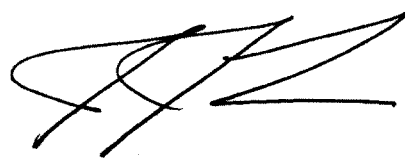
Disclosure Of Federal Participation In Payment Of Terrorism Losses

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals 85% of that portion of the amount of such insured losses that exceeds the applicable insurer retention. However, if aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a Program Year (January 1 through December 31), the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

Cap On Insurer Participation In Payment Of Terrorism Losses

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a Program Year (January 1 through December 31) and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

We are providing you with the terrorism coverage required by the Act. We have not established a separate price for this coverage; however the portion of your annual premium that is reasonably attributable to such coverage is: **\$0.**



Authorized Agent

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured Hawaii Employer-Union Health Benefits Trust Fund			Endorsement Number 19
Policy Symbol EON	Policy Number G23632913 006	Policy Period 12/15/2011 to 12/15/2012	Effective Date of Endorsement 12/15/2011
Issued By (Name of Insurance Company) Illinois Union Insurance Company			

Cap On Losses From Certified Acts Of Terrorism

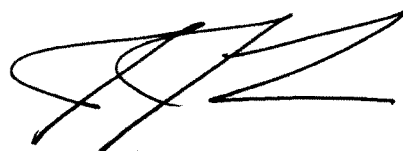
It is agreed that the Limit(s) of Liability section is amended by adding the following:

- Notwithstanding anything in this **Policy** to the contrary, if aggregate insured losses attributable to terrorist acts certified under the federal Terrorism Risk Insurance Act exceed \$100 billion in a Program Year (January 1 through December 31) and the **Insurer** has met its deductible under the Terrorism Risk Insurance Act, the **Insurer** shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

All other terms and conditions of this **Policy** remain unchanged.



Authorized Representative

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured Hawaii Employer-Union Health Benefits Trust Fund			Endorsement Number 20
Policy Symbol EON	Policy Number G23632913 006	Policy Period 12/15/2011 to 12/15/2012	Effective Date of Endorsement 12/15/2011
Issued By (Name of Insurance Company) Illinois Union Insurance Company			

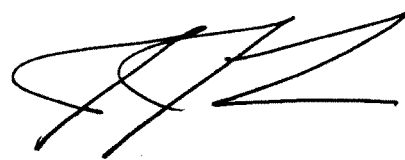
Notice Amended

It is agreed that the Notice section of the **Policy** is amended by adding the following:

Notwithstanding anything in this section to the contrary, written **Claim** notices may also be transmitted via email to the following address:

ProfessionalLiabilityFirstNotice@acegroup.com

All other terms and conditions of this **Policy** remain unchanged.



Authorized Representative



ace usa

ACE USA
140 Broadway, 41st Floor
New York NY 10005

646-458-7000 tel
646-458-6903/6904 fax

www.ace-ina.com

Karilyn Wells
Senior Underwriter - Professional Risk

December 15, 2011

Joy Arakaki
AON Risk Services Inc Of Hawaii
201 Merchant St Suite 2400
Honolulu, HI 96813

RE:	Insured:	Hawaii Employer-Union Health Benefits Trust Fund
	Coverage:	Commercial Crime Policy
	Policy No:	DON G24581111 003
	Company Paper:	Westchester Fire Insurance Company
	Policy Form:	CR DS 00 27 (0506)
	Policy Period:	12/15/2011 to 12/15/2012

Dear Joy,

We are pleased to enclose the original copy of the captioned policy.

As producer of record, you are responsible for collecting and filing all necessary surplus lines taxes, fees and documentation in accordance with state surplus lines laws and/or regulations, if applicable.

Also, as a reminder, all claim notices under this policy should be provided in writing to the following address:

ACE Professional Risk
P.O. Box 5105
Scranton, PA 18505-0518
Fax Number: 877-746-4641
Email Address for submitting Management Liability Claims,
Managementliabilityfirstnotice@acegroup.com
Email address for all other correspondence, ApolloproRskACEIncoming@acegroup.com

We have reviewed the policy and trust you will find it to be in order. Should you have any questions or concerns, please advise us promptly.

Thank you for working with us on the placement of this risk. We appreciate your support and look forward to working with you in the future.

Regards,

KWells

Karilyn Wells
Senior Underwriter
ACE USA – Professional Risk



GOVERNMENT CRIME POLICY DECLARATIONS

In Return For The Payment Of The Premium, And Subject To All The Terms And Conditions Of This Policy, We Agree With You To Provide The Insurance As Stated In This Policy.

Coverage Is Written:

☒

Primary

☐

Excess

☐

Coindemnity

☐

Concurrent

Company Name Area:	Westchester Fire Insurance Company
Producer Name Area:	AON Risk Services Inc Of Hawaii 201 Merchant St., Suite 2400 Honolulu, HI 96813
Named Insured:	Hawaii Employer-Union Health Benefits Trust Fund
	(Also list any Employee Benefit Plan(s) included as Insureds):
Mailing Address:	201 Merchant Street, Suite 1520, Honolulu, HI 96813
Policy Period	
From:	12/15/2011
To:	12/15/2012 12:01 A.M. at your mailing address shown above.

Insuring Agreements	Limit Of Insurance Per Occurrence	Deductible Amount Per Occurrence
1. Employee Theft – Per Loss Coverage	\$1,000,000	\$5,000
2. Employee Theft – Per Employee Coverage	Not included	Not included
3. Forgery Or Alteration	\$1,000,000	\$5,000
4. Inside The Premises – Theft Of Money And Securities	Not included	Not Included
5. Inside The Premises – Robbery Or Safe Burglary Of Other Property	Not Included	Not Included
6. Outside The Premises	Not Included	Not Included
7. Computer Fraud	\$1,000,000	\$5,000
8. Funds Transfer Fraud	\$1,000,000	\$5,000
9. Money Orders And Counterfeit Money	Not Included	Not Included

If "Not Covered" is inserted above opposite any specified Insuring Agreement, such Insuring Agreement and any other reference thereto in this policy is deleted.

If Added By Endorsement:

Insuring Agreement(s)	Limit Of Insurance Per Occurrence	Deductible Amount Per Occurrence
	\$	\$

Endorsements Forming Part Of This Policy When Issued:

ALL-20887 (10/06) – ACE Producer Compensation Practices & Policies
CC-1K11g (01/11) – Signatures
PF-17914 (02/05) – U.S. Treasury Department's Office of Foreign Assets
ALL – 21101 – Trade or Economic Sanctions Endorsement
CR 20 02 08 07 – Policy Change Endorsement
CR 2541 (10/10) Include Designated Persons or Classes of Persons As Employees

Cancellation Of Prior Insurance Issued By Us:

By acceptance of this Policy you give us notice cancelling prior policy

Nos. G24581111 002

; the cancellation to be effective at the time this Policy becomes effective.

Countersignature Of Authorized Representative

Name: Robert B.Portwood

Title: Vice President

Signature:



ROBERT B. PORTWOOD, Vice President

Date:



Government Crime Policy (Loss Sustained Form)

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is or is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section F. Definitions.

A. Insuring Agreements

Coverage is provided under the following Insuring Agreements for which a Limit of Insurance is shown in the Declarations and applies to loss that you sustain resulting directly from an "occurrence" taking place during the Policy Period shown in the Declarations, except as provided in Condition E.1.n. or E.1.o., which is "discovered" by you during the Policy Period shown in the Declarations or during the period of time provided in the Extended Period To Discover Loss Condition E.1.i.:

1. Employee Theft – Per Loss Coverage

We will pay for loss of or damage to "money", "securities" and "other property" resulting directly from "theft" committed by an "employee", whether identified or not, acting alone or in collusion with other persons.

For the purposes of this Insuring Agreement, "theft" shall also include forgery.

2. Employee Theft – Per Employee Coverage

We will pay for loss of or damage to "money", "securities" and "other property" resulting directly from "theft" committed by each "employee", whether identified or not, acting alone or in collusion with other persons.

For the purposes of this Insuring Agreement, "theft" shall also include forgery.

3. Forgery Or Alteration

a. We will pay for loss resulting directly from "forgery" or alteration of checks, drafts, promissory notes, or similar written promises, orders or directions to pay a sum certain in "money" that are:

- (1) Made or drawn by or drawn upon you; or

- (2) Made or drawn by one acting as your agent;

or that are purported to have been so made or drawn.

For the purposes of this Insuring Agreement, a substitute check as defined in the Check Clearing for the 21st Century Act shall be treated the same as the original it replaced.

- b. If you are sued for refusing to pay any instrument covered in Paragraph 3.a., on the basis that it has been forged or altered, and you have our written consent to defend against the suit, we will pay for any reasonable legal expenses that you incur and pay in that defense. The amount that we will pay is in addition to the Limit of Insurance applicable to this Insuring Agreement.

4. Inside The Premises – Theft Of Money And Securities

a. We will pay for loss of "money" and "securities" inside the "premises" or "banking premises":

- (1) Resulting directly from "theft" committed by a person present inside such "premises" or "banking premises"; or
- (2) Resulting directly from disappearance or destruction.

b. We will pay for loss from damage to the "premises" or its exterior resulting directly from an actual or attempted "theft" of "money" and "securities", if you are the owner of the "premises" or are liable for damage to it.

c. We will pay for loss of or damage to a locked safe, vault, cash register, cash box or cash drawer located inside the "premises" resulting directly from an actual or attempted "theft" of or unlawful entry into those containers.

5. Inside The Premises – Robbery Or Safe Burglary Of Other Property

a. We will pay for loss of or damage to "other property":

- (1) Inside the "premises" resulting directly from an actual or attempted "robbery" of a "custodian"; or

(2) Inside the "premises" in a safe or vault resulting directly from an actual or attempted "safe burglary".

- b. We will pay for loss from damage to the "premises" or its exterior resulting directly from an actual or attempted "robbery" or "safe burglary" of "other property", if you are the owner of the "premises" or are liable for damage to it.
- c. We will pay for loss of or damage to a locked safe or vault located inside the "premises" resulting directly from an actual or attempted "robbery" or "safe burglary".

6. Outside The Premises

- a. We will pay for loss of "money" and "securities" outside the "premises" in the care and custody of a "messenger" or an armored motor vehicle company resulting directly from "theft", disappearance or destruction.
- b. We will pay for loss of or damage to "other property" outside the "premises" in the care and custody of a "messenger" or an armored motor vehicle company resulting directly from an actual or attempted "robbery".

7. Computer Fraud

We will pay for loss of or damage to "money", "securities" and "other property" resulting directly from the use of any computer to fraudulently cause a transfer of that property from inside the "premises" or "banking premises":

- a. To a person (other than a "messenger") outside those "premises"; or
- b. To a place outside those "premises".

8. Funds Transfer Fraud

We will pay for loss of "funds" resulting directly from a "fraudulent instruction" directing a financial institution to transfer, pay or deliver "funds" from your "transfer account".

9. Money Orders And Counterfeit Money

We will pay for loss resulting directly from your having accepted in good faith, in exchange for merchandise, "money" or services:

- a. Money orders issued by any post office, express company or bank that are not paid upon presentation; or
- b. "Counterfeit money" that is acquired during the regular course of business.

B. Limit Of Insurance

The most we will pay for all loss resulting directly from an "occurrence" is the applicable Limit of Insurance shown in the Declarations.

If any loss is covered under more than one Insuring Agreement or Coverage, the most we will pay for such loss shall not exceed the largest Limit of Insurance available under any one of those Insuring Agreements or Coverages.

C. Deductible

We will not pay for loss resulting directly from an "occurrence" unless the amount of loss exceeds the Deductible Amount shown in the Declarations. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance.

D. Exclusions

1. This policy does not cover:

a. Acts Committed By You

Loss resulting from "theft" or any other dishonest act committed by you, whether acting alone or in collusion with other persons.

b. Acts Of Employees Learned Of By You Prior To The Policy Period

Loss caused by an "employee" if the "employee" had also committed "theft" or any other dishonest act prior to the effective date of this policy and you or any of your officials, not in collusion with the "employee", learned of that "theft" or dishonest act prior to the Policy Period shown in the Declarations.

c. Acts Of Officials, Employees Or Representatives

Loss resulting from "theft" or any other dishonest act committed by any of your officials, "employees" or authorized representatives:

- (1) Whether acting alone or in collusion with other persons; or
- (2) While performing services for you or otherwise;

except when covered under Insuring Agreement **A.1.** or **A.2.**

d. Confidential Information

Loss resulting from:

- (1) The unauthorized disclosure of your confidential information including, but not limited to, patents, trade secrets, processing methods or customer lists; or

- (2) The unauthorized use or disclosure of confidential information of another person or entity which is held by you including, but not limited to, financial information, personal information, credit card information or similar non-public information.

e. Governmental Action

Loss resulting from seizure or destruction of property by order of governmental authority.

f. Indirect Loss

Loss that is an indirect result of an "occurrence" covered by this policy including, but not limited to, loss resulting from:

- (1) Your inability to realize income that you would have realized had there been no loss of or damage to "money", "securities" or "other property".
- (2) Payment of damages of any type for which you are legally liable. But, we will pay compensatory damages arising directly from a loss covered under this policy.
- (3) Payment of costs, fees or other expenses you incur in establishing either the existence or the amount of loss under this policy.

g. Legal Fees, Costs And Expenses

Fees, costs and expenses incurred by you which are related to any legal action, except when covered under Insuring Agreement A.3.

h. Nuclear Hazard

Loss or damage resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

i. Pollution

Loss or damage caused by or resulting from pollution. Pollution means the discharge, dispersal, seepage, migration, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

j. War And Military Action

Loss or damage resulting from:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

2. Insuring Agreements A.1. and A.2. do not cover:

a. Bonded Employees

Loss caused by any "employee" required by law to be individually bonded.

b. Inventory Shortages

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

- (1) An inventory computation; or
- (2) A profit and loss computation.

However, where you establish wholly apart from such computations that you have sustained a loss, then you may offer your inventory records and actual physical count of inventory in support of the amount of loss claimed.

c. Trading

Loss resulting from trading, whether in your name or in a genuine or fictitious account.

d. Treasurers Or Tax Collectors

Loss caused by any treasurer or tax collector by whatever name known.

3. Insuring Agreements A.4., A.5. and A.6. do not cover:

a. Accounting Or Arithmetical Errors Or Omissions

Loss resulting from accounting or arithmetical errors or omissions.

b. Exchanges Or Purchases

Loss resulting from the giving or surrendering of property in any exchange or purchase.

c. Fire

Loss or damage resulting from fire, however caused, except:

- (1) Loss of or damage to "money" and "securities"; and
- (2) Loss from damage to a safe or vault.

d. Money Operated Devices

Loss of property contained in any money operated device unless the amount of "money" deposited in it is recorded by a continuous recording instrument in the device.

e. Motor Vehicles Or Equipment And Accessories

Loss of or damage to motor vehicles, trailers or semi-trailers or equipment and accessories attached to them.

f. Transfer Or Surrender Of Property

- (1) Loss of or damage to property after it has been transferred or surrendered to a person or place outside the "premises" or "banking premises":
 - (a) On the basis of unauthorized instructions;
 - (b) As a result of a threat to do bodily harm to any person;
 - (c) As a result of a threat to do damage to any property;
 - (d) As a result of a threat to introduce a denial of service attack into your computer system;
 - (e) As a result of a threat to introduce a virus or other malicious instruction into your computer system which is designed to damage, destroy or corrupt data or computer programs stored within your computer system;
 - (f) As a result of a threat to contaminate, pollute or render substandard your products or goods; or
 - (g) As a result of a threat to disseminate, divulge or utilize:
 - (i) Your confidential information; or
 - (ii) Weaknesses in the source code within your computer system.

(2) But, this Exclusion does not apply under Insuring Agreement **A.6.** to loss of "money", "securities" or "other property" while outside the "premises" in the care and custody of a "messenger" if you:

- (a) Had no knowledge of any threat at the time the conveyance began; or
- (b) Had knowledge of a threat at the time the conveyance began, but the loss was not related to the threat.

g. Vandalism

Loss from damage to the "premises" or its exterior, or to any safe, vault, cash register, cash box, cash drawer or "other property" by vandalism or malicious mischief.

h. Voluntary Parting Of Title To Or Possession Of Property

Loss resulting from your, or anyone acting on your express or implied authority, being induced by any dishonest act to voluntarily part with title to or possession of any property.

4. Insuring Agreement **A.7.** does not cover:

a. Credit Card Transactions

Loss resulting from the use or purported use of credit, debit, charge, access, convenience, identification, stored-value or other cards or the information contained on such cards.

b. Funds Transfer Fraud

Loss resulting from a "fraudulent instruction" directing a financial institution to transfer, pay or deliver "funds" from your "transfer account".

c. Inventory Shortages

Loss, or that part of any loss, the proof which as to its existence or amount is dependent upon:

- (1) An inventory computation; or
- (2) A profit and loss computation.

5. Insuring Agreement **A.8.** does not cover:

COMPUTER FRAUD

Loss resulting from the use of any computer to fraudulently cause a transfer of "money", "securities" or "other property".

E. Conditions

1. Conditions Applicable To All Insuring Agreements

a. Additional Premises Or Employees

If, while this policy is in force, you establish any additional "premises" or hire additional "employees", such "premises" and "employees" shall automatically be covered under this policy. Notice to us of an increase in the number of "premises" or "employees" need not be given and no additional premium need be paid for the remainder of the Policy Period shown in the Declarations.

b. Cancellation Of Policy

- (1) The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
- (2) We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - (a) 10 days before the effective date of cancellation if we cancel for non-payment of premium; or
 - (b) 30 days before the effective date of cancellation if we cancel for any other reason.
- (3) We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
- (4) Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
- (5) If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
- (6) If notice is mailed, proof of mailing will be sufficient proof of notice.

c. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

d. Concealment, Misrepresentation Or Fraud

This policy is void in any case of fraud by you as it relates to this policy at any time. It is also void if you or any other Insured, at any time, intentionally conceal or misrepresent a material fact concerning:

- (1) This policy;
- (2) The property covered under this policy;
- (3) Your interest in the property covered under this policy; or
- (4) A claim under this policy.

e. Cooperation

You must cooperate with us in all matters pertaining to this policy as stated in its terms and conditions.

f. Duties In The Event Of Loss

After you "discover" a loss or a situation that may result in loss of or damage to "money", "securities" or "other property" you must:

- (1) Notify us as soon as possible. If you have reason to believe that any loss (except for loss covered under Insuring Agreement **A.1.**, **A.2.** or **A.3.**) involves a violation of law, you must also notify the local law enforcement authorities.
- (2) Submit to examination under oath at our request and give us a signed statement of your answers.
- (3) Produce for our examination all pertinent records.
- (4) Give us a detailed, sworn proof of loss within 120 days.
- (5) Cooperate with us in the investigation and settlement of any claim.

g. Employee Benefit Plans

- (1) The employee benefit plans shown in the Declarations (hereafter referred to as Plan) are included as Insureds under Insuring Agreement **A.1.** or **A.2.**
- (2) Any payment we make for loss sustained by any Plan will be made to the Plan sustaining the loss.
- (3) The Deductible Amount applicable to Insuring Agreement **A.1.** or **A.2.** does not apply to loss sustained by any Plan.

h. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the Policy Period shown in the Declarations and up to 3 years afterward.

i. Extended Period To Discover Loss

We will pay for loss that you sustained prior to the effective date of cancellation of this policy, which is "discovered" by you no later than 1 year from the date of that cancellation.

However, this extended period to "discover" loss terminates immediately upon the effective date of any other insurance obtained by you, whether from us or another insurer, replacing in whole or in part the coverage afforded under this policy, whether or not such other insurance provides coverage for loss sustained prior to its effective date.

j. Inspections And Surveys

- (1) We have the right to:
 - (a) Make inspections and surveys at any time;
 - (b) Give you reports on the conditions we find; and
 - (c) Recommend changes.
- (2) We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
 - (a) Are safe or healthful; or
 - (b) Comply with laws, regulations, codes or standards.
- (3) Paragraphs j.(1) and j.(2) apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

k. Joint Insured

- (1) If more than one Insured is named in the Declarations, the first Named Insured will act for itself and for every other Insured for all purposes of this policy. If the first Named Insured ceases to be covered, then the next Named Insured will become the first Named Insured.

- (2) If any Insured or official of that Insured has knowledge of any information relevant to this policy, that knowledge is considered knowledge of every Insured.
- (3) An "employee" of any Insured is considered to be an "employee" of every Insured.
- (4) If this policy or any of its coverages is cancelled as to any Insured, loss sustained by that Insured is covered only if it is "discovered" by you no later than 1 year from the date of that cancellation.

However, this extended period to "discover" loss terminates immediately upon the effective date of any other insurance obtained by that Insured, whether from us or another insurer, replacing in whole or in part the coverage afforded under this policy, whether or not such other insurance provides coverage for loss sustained prior to its effective date.

- (5) We will not pay more for loss sustained by more than one Insured than the amount we would pay if all such loss had been sustained by one Insured.
- (6) Payment by us to the first Named Insured for loss sustained by any Insured, other than an employee benefit plan, shall fully release us on account of such loss.

l. Legal Action Against Us

You may not bring any legal action against us involving loss:

- (1) Unless you have complied with all the terms of this policy;
- (2) Until 90 days after you have filed proof of loss with us; and
- (3) Unless brought within 2 years from the date you "discovered" the loss.

If any limitation in this Condition is prohibited by law, such limitation is amended so as to equal the minimum period of limitation provided by such law.

m. Liberalization

If we adopt any revision that would broaden the coverage under this policy without additional premium within 45 days prior to or during the Policy Period shown in the Declarations, the broadened coverage will immediately apply to this policy.

n. Loss Sustained During Prior Insurance Issued By Us Or Any Affiliate

(1) Loss Sustained Partly During This Policy And Partly During Prior Insurance

If you "discover" loss during the Policy Period shown in the Declarations, resulting directly from an "occurrence" taking place:

- (a) Partly during the Policy Period shown in the Declarations; and
- (b) Partly during the Policy Period(s) of any prior cancelled insurance that we or any affiliate issued to you or any predecessor in interest;

and this policy became effective at the time of cancellation of the prior insurance, we will first settle the amount of loss that you sustained during this Policy Period. We will then settle the remaining amount of loss that you sustained during the Policy Period(s) of the prior insurance.

(2) Loss Sustained Entirely During Prior Insurance

If you "discover" loss during the Policy Period shown in the Declarations, resulting directly from an "occurrence" taking place entirely during the Policy Period(s) of any prior cancelled insurance that we or any affiliate issued to you or any predecessor in interest, we will pay for the loss, provided:

- (a) This policy became effective at the time of cancellation of the prior insurance; and
- (b) The loss would have been covered under this policy had it been in effect at the time of the "occurrence".

We will first settle the amount of loss that you sustained during the most recent prior insurance. We will then settle any remaining amount of loss that you sustained during the Policy Period(s) of any other prior insurance.

(3) In settling loss subject to this Condition:

- (a) The most we will pay for the entire loss is the highest single Limit of Insurance applicable during the period of loss, whether such limit was written under this policy or was written under the prior insurance issued by us.

- (b) We will apply the applicable Deductible Amount shown in the Declarations to the amount of loss sustained under this policy. If no loss was sustained under this policy, we will apply the Deductible Amount shown in the Declarations to the amount of loss sustained under the most recent prior insurance.

If the Deductible Amount is larger than the amount of loss sustained under this policy, or the most recent prior insurance, we will apply the remaining Deductible Amount to the remaining amount of loss sustained during the prior insurance.

We will not apply any other Deductible Amount that may have been applicable to the loss.

- (4) The following examples demonstrate how we will settle losses subject to this Condition **E.1.n.:**

EXAMPLE NO. 1:

The insured sustained a covered loss of \$10,000 resulting directly from an "occurrence" taking place during the terms of Policy **A** and Policy **B**.

POLICY A

The current policy. Written at a Limit of Insurance of \$50,000 and a Deductible Amount of \$5,000.

POLICY B

Issued prior to Policy **A**. Written at a Limit of Insurance of \$50,000 and a Deductible Amount of \$5,000.

The amount of loss sustained under Policy **A** is \$2,500 and under Policy **B** is \$7,500.

The highest single Limit of Insurance applicable to this entire loss is \$50,000 written under Policy **A**. The Policy **A** Deductible Amount of \$5,000 applies. The loss is settled as follows:

- 1. The amount of loss sustained under Policy **A** (\$2,500) is settled first. The amount we will pay is nil (\$0.00) because the amount of loss is less than the Deductible Amount (i.e., \$2,500 loss - \$5,000 deductible = \$0.00).

2. The remaining amount of loss sustained under Policy **B** (\$7,500) is settled next. The amount recoverable is \$5,000 after the remaining Deductible Amount from Policy **A** of \$2,500 is applied to the loss (i.e., \$7,500 loss - \$2,500 deductible = \$5,000).

The most we will pay for this loss is \$5,000.

EXAMPLE NO. 2:

The insured sustained a covered loss of \$250,000 resulting directly from an "occurrence" taking place during the terms of Policy **A** and Policy **B**.

POLICY A

The current policy. Written at a Limit of Insurance of \$125,000 and a Deductible Amount of \$10,000.

POLICY B

Issued prior to Policy **A**. Written at a Limit of Insurance of \$150,000 and a Deductible Amount of \$25,000.

The amount of loss sustained under Policy **A** is \$175,000 and under Policy **B** is \$75,000.

The highest single Limit of Insurance applicable to this entire loss is \$150,000 written under Policy **B**. The Policy **A** Deductible Amount of \$10,000 applies. The loss is settled as follows:

1. The amount of loss sustained under Policy **A** (\$175,000) is settled first. The amount we will pay is the Policy **A** Limit of \$125,000 because \$175,000 loss - \$10,000 deductible = \$165,000 which is greater than the \$125,000 policy limit.
2. The remaining amount of loss sustained under Policy **B** (\$75,000) is settled next. The amount we will pay is \$25,000 (i.e., \$150,000 Policy **B** limit - \$125,000 paid under Policy **A** = \$25,000).

The most we will pay for this loss is \$150,000.

EXAMPLE NO. 3:

The insured sustained a covered loss of \$2,000,000 resulting directly from an "occurrence" taking place during the terms of Policies **A**, **B**, **C** and **D**.

POLICY A

The current policy. Written at a Limit of Insurance of \$1,000,000 and a Deductible Amount of \$100,000.

POLICY B

Issued prior to Policy **A**. Written at a Limit of Insurance of \$750,000 and a Deductible Amount of \$75,000.

POLICY C

Issued prior to Policy **B**. Written at a Limit of Insurance of \$500,000 and a Deductible Amount of \$50,000.

POLICY D

Issued prior to Policy **C**. Written at a Limit of Insurance of \$500,000 and a Deductible Amount of \$50,000.

The amount of loss sustained under Policy **A** is \$350,000, under Policy **B** is \$250,000, under Policy **C** is \$600,000 and under Policy **D** is \$800,000.

The highest single Limit of Insurance applicable to this entire loss is \$1,000,000 written under Policy **A**. The Policy **A** Deductible Amount of \$100,000 applies. The loss is settled as follows:

1. The amount of loss sustained under Policy **A** (\$350,000) is settled first. The amount we will pay is \$250,000 (i.e., \$350,000 loss - \$100,000 deductible = \$250,000).
2. The amount of loss sustained under Policy **B** (\$250,000) is settled next. The amount we will pay is \$250,000 (no deductible is applied).
3. The amount of loss sustained under Policy **C** (\$600,000) is settled next. The amount we will pay is \$500,000, the policy limit (no deductible is applied).
4. We will not make any further payment under Policy **D** as the maximum amount payable under the highest single Limit of Insurance applying to the loss of \$1,000,000 under Policy **A** has been satisfied.

The most we will pay for this loss is \$1,000,000.

o. Loss Sustained During Prior Insurance Not Issued By Us Or Any Affiliate

- (1) If you "discover" loss during the Policy Period shown in the Declarations, resulting directly from an "occurrence" taking place during the Policy Period of any prior cancelled insurance that was issued to you or a predecessor in interest by another company, and the period of time to discover loss under that insurance had expired, we will pay for the loss under this policy, provided:
- (a) This policy became effective at the time of cancellation of the prior insurance; and
 - (b) The loss would have been covered under this policy had it been in effect at the time of the "occurrence".
- (2) In settling loss subject to this Condition:
- (a) The most we will pay for the entire loss is the lesser of the Limits of Insurance applicable during the period of loss, whether such limit was written under this policy or was written under the prior cancelled insurance.
 - (b) We will apply the applicable Deductible Amount shown in the Declarations to the amount of loss sustained under the prior cancelled insurance.
- (3) The insurance provided under this Condition is subject to the following:
- (a) If loss covered under this Condition is also partially covered under Condition **E.1.n.**, the amount recoverable under this Condition is part of, not in addition to, the amount recoverable under Condition **E.1.n.**
 - (b) For loss covered under this Condition that is not subject to Paragraph (3)(a), the amount recoverable under this Condition is part of, not in addition to, the Limit of Insurance applicable to the loss covered under this policy and is limited to the lesser of the amount recoverable under:
 - (i) This policy as of its effective date; or
 - (ii) The prior cancelled insurance had it remained in effect.

p. Other Insurance

If other valid and collectible insurance is available to you for loss covered under this policy, our obligations are limited as follows:

(1) Primary Insurance

When this policy is written as primary insurance, and:

- (a) You have other insurance subject to the same terms and conditions as this policy, we will pay our share of the covered loss. Our share is the proportion that the applicable Limit of Insurance shown in the Declarations bears to the total limit of all insurance covering the same loss.
- (b) You have other insurance covering the same loss other than that described in Paragraph (1)(a), we will only pay for the amount of loss that exceeds:
 - (i) The Limit of Insurance and Deductible Amount of that other insurance, whether you can collect on it or not; or
 - (ii) The Deductible Amount shown in the Declarations;

whichever is greater. Our payment for loss is subject to the terms and conditions of this policy.

(2) Excess Insurance

- (a) When this policy is written excess over other insurance, we will only pay for the amount of loss that exceeds the Limit of Insurance and Deductible Amount of that other insurance, whether you can collect on it or not. Our payment for loss is subject to the terms and conditions of this policy.
- (b) However, if loss covered under this policy is subject to a Deductible, we will reduce the Deductible Amount shown in the Declarations by the sum total of all such other insurance plus any Deductible Amount applicable to that other insurance.

q. Ownership Of Property; Interests Covered

The property covered under this policy is limited to property:

- (1) That you own or lease; or
- (2) That you hold for others whether or not you are legally liable for the loss of such property.

However, this policy is for your benefit only. It provides no rights or benefits to any other person or organization. Any claim for loss that is covered under this policy must be presented by you.

r. Premiums

The first Named Insured shown in the Declarations:

- (1) Is responsible for the payment of all premiums; and
- (2) Will be the payee for any return premiums we pay.

s. Records

You must keep records of all property covered under this policy so we can verify the amount of any loss.

t. Recoveries

- (1) Any recoveries, whether effected before or after any payment under this policy, whether made by us or you, shall be applied net of the expense of such recovery:
 - (a) First, to you in satisfaction of your covered loss in excess of the amount paid under this policy;
 - (b) Second, to us in satisfaction of amounts paid in settlement of your claim;
 - (c) Third, to you in satisfaction of any Deductible Amount; and
 - (d) Fourth, to you in satisfaction of any loss not covered under this policy.
- (2) Recoveries do not include any recovery:
 - (a) From insurance, suretyship, reinsurance, security or indemnity taken for our benefit; or
 - (b) Of original "securities" after duplicates of them have been issued.

u. Territory

This policy covers loss that you sustain resulting directly from an "occurrence" taking place within the United States of America (including its territories and possessions) and Puerto Rico.

v. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent.

w. Transfer Of Your Rights Of Recovery Against Others To Us

You must transfer to us all your rights of recovery against any person or organization for any loss you sustained and for which we have paid or settled. You must also do everything necessary to secure those rights and do nothing after loss to impair them.

x. Valuation – Settlement

- (1) The value of any loss for purposes of coverage under this policy shall be determined as follows:
 - (a) Loss of "money" but only up to and including its face value.
 - (b) Loss of "securities" but only up to and including their value at the close of business on the day the loss was "discovered". We may, at our option:
 - (i) Pay the market value of such "securities" or replace them in kind, in which event you must assign to us all your rights, title and interest in and to those "securities"; or
 - (ii) Pay the cost of any Lost Securities Bond required in connection with issuing duplicates of the "securities". However, we will be liable only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of the:
 - i. Market value of the "securities" at the close of business on the day the loss was "discovered"; or
 - ii. The Limit of Insurance applicable to the securities.
 - (c) Loss of or damage to "other property" or loss from damage to the "premises" or its exterior for the replacement cost of the property without deduction for depreciation. However, we will not pay more than the least of the following:
 - (i) The cost to replace the lost or damaged property with property of comparable material and quality and used for the same purpose;

- (ii) The amount you actually spend that is necessary to repair or replace the lost or damaged property; or
- (iii) The Limit of Insurance applicable to the lost or damaged property.

With regard to Paragraphs **x.(1)(c)(i)** through **x.(1)(c)(iii)**, we will not pay on a replacement cost basis for any loss or damage:

- i. Until the lost or damaged property is actually repaired or replaced; and
- ii. Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.

If the lost or damaged property is not repaired or replaced, we will pay on an actual cash value basis.

- (2) Any property that we pay for or replace becomes our property.

2. Conditions Applicable To Insuring Agreements A.1. And A.2.

a. Indemnification

We will indemnify any of your officials who are required by law to give individual bonds for the faithful performance of their duties against loss through "theft" committed by "employees" who serve under them, subject to the applicable Limit of Insurance.

b. Termination As To Any Employee

This Insuring Agreement terminates as to any "employee":

- (1) As soon as:
 - (a) You; or
 - (b) Any of your officials or employees authorized to manage, govern or control your "employees" not in collusion with the "employee";

learn of "theft" or any other dishonest act committed by the "employee" whether before or after becoming employed by you.
- (2) On the date specified in a notice mailed to the first Named Insured. That date will be at least 30 days after the date of mailing.

We will mail or deliver our notice to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice.

c. Territory

We will pay for loss caused by any "employee" while temporarily outside the territory specified in the Territory Condition **E.1.u.** for a period of not more than 90 consecutive days.

3. Conditions Applicable To Insuring Agreement A.3.

a. Deductible Amount

The Deductible Amount does not apply to legal expenses paid under Insuring Agreement **A.3.**

b. Electronic And Mechanical Signatures

We will treat signatures that are produced or reproduced electronically, mechanically or by other means the same as handwritten signatures.

c. Proof Of Loss

You must include with your proof of loss any instrument involved in that loss, or, if that is not possible, an affidavit setting forth the amount and cause of loss.

d. Territory

We will cover loss that you sustain resulting directly from an "occurrence" taking place anywhere in the world. Territory Condition **E.1.u.** does not apply to Insuring Agreement **A.3.**

4. Conditions Applicable To Insuring Agreements A.5. And A.6.

a. Armored Motor Vehicle Companies

Under Insuring Agreement **A.6.**, we will only pay for the amount of loss you cannot recover:

- (1) Under your contract with the armored motor vehicle company; and
- (2) From any insurance or indemnity carried by, or for the benefit of customers of, the armored motor vehicle company.

b. Special Limit Of Insurance For Specified Property

We will only pay up to \$5,000 for any one "occurrence" of loss of or damage to manuscripts, drawings, or records of any kind, or the cost of reconstructing them or reproducing any information contained in them.

5. Conditions Applicable To Insuring Agreement A.7.

a. Special Limit Of Insurance For Specified Property

We will only pay up to \$5,000 for any one "occurrence" of loss of or damage to manuscripts, drawings, or records of any kind, or the cost of reconstructing them or reproducing any information contained in them.

b. Territory

We will cover loss that you sustain resulting directly from an "occurrence" taking place anywhere in the world. Territory Condition **E.1.u.** does not apply to Insuring Agreement **A.7.**

F. Definitions

1. "Banking premises" means the interior of that portion of any building occupied by a banking institution or similar safe depository.
2. "Counterfeit money" means an imitation of "money" that is intended to deceive and to be taken as genuine.
3. "Custodian" means you, or any "employee" while having care and custody of property inside the "premises", excluding any person while acting as a "watchperson" or janitor.
4. "Discover" or "discovered" means the time when you first become aware of facts which would cause a reasonable person to assume that a loss of a type covered by this policy has been or will be incurred, regardless of when the act or acts causing or contributing to such loss occurred, even though the exact amount or details of loss may not then be known.

"Discover" or "discovered" also means the time when you first receive notice of an actual or potential claim in which it is alleged that you are liable to a third party under circumstances which, if true, would constitute a loss under this policy.
5. "Employee":
 - a. "Employee" means:
 - (1) Any natural person:
 - (a) While in your service and for the first 30 days immediately after termination of service, unless such termination is due to "theft" or any other dishonest act committed by the "employee";
 - (b) Who you compensate directly by salary, wages or commissions; and

- (c) Who you have the right to direct and control while performing services for you;
 - (2) Any natural person who is furnished temporarily to you:
 - (a) To substitute for a permanent "employee" as defined in Paragraph **a.(1)**, who is on leave; or
 - (b) To meet seasonal or short-term work load conditions;

while that person is subject to your direction and control and performing services for you, excluding, however, any such person while having care and custody of property outside the "premises";
 - (3) Any natural person who is leased to you under a written agreement between you and a labor leasing firm, to perform duties related to the conduct of your business, but does not mean a temporary employee as defined in Paragraph **a.(2)**;
 - (4) Any natural person who is:
 - (a) A trustee, officer, employee, administrator or manager, except an administrator or manager who is an independent contractor, of any employee benefit plan; and
 - (b) An official of yours while that person is engaged in handling "funds" or "other property" of any employee benefit plan;
 - (5) Any natural person who is a former official, "employee", or trustee retained as a consultant while performing services for you; or
 - (6) Any natural person who is a guest student or intern pursuing studies or duties, excluding, however, any such person while having care and custody of property outside the "premises".
- b. "Employee" does not mean any agent, independent contractor or representative of the same general character not specified in Paragraph **5.a.**
6. "Forgery" means the signing of the name of another person or organization with intent to deceive; it does not mean a signature which consists in whole or in part of one's own name signed with or without authority, in any capacity, for any purpose.

7. "Fraudulent instruction" means:
 - a. An electronic, telegraphic, cable, teletype, telefacsimile or telephone instruction which purports to have been transmitted by you, but which was in fact fraudulently transmitted by someone else without your knowledge or consent;
 - b. A written instruction (other than those described in Insuring Agreement **A.3.**) issued by you, which was forged or altered by someone other than you without your knowledge or consent, or which purports to have been issued by you, but was in fact fraudulently issued without your knowledge or consent; or
 - c. An electronic, telegraphic, cable, teletype, telefacsimile, telephone or written instruction initially received by you which purports to have been transmitted by an "employee" but which was in fact fraudulently transmitted by someone else without your or the "employee's" knowledge or consent.
8. "Funds" means "money" and "securities".
9. "Messenger" means you or any "employee" while having care and custody of property outside the "premises".
10. "Money" means:
 - a. Currency, coins and bank notes in current use and having a face value; and
 - b. Travelers checks, register checks and money orders held for sale to the public.
11. "Occurrence" means:
 - a. Under Insuring Agreement **A.1.**:
 - (1) An individual act;
 - (2) The combined total of all separate acts whether or not related; or
 - (3) A series of acts whether or not related; committed by an "employee" acting alone or in collusion with other persons, during the Policy Period shown in the Declarations, except as provided under Condition **E.1.n.** or **E.1.o.**
 - b. Under Insuring Agreement **A.2.**:
 - (1) An individual act;
 - (2) The combined total of all separate acts whether or not related; or
 - (3) A series of acts whether or not related; committed by each "employee" acting alone or in collusion with other persons, during the Policy Period shown in the Declarations, except as provided under Condition **E.1.n.** or **E.1.o.**
- c. Under Insuring Agreement **A.3.**:
 - (1) An individual act;
 - (2) The combined total of all separate acts whether or not related; or
 - (3) A series of acts whether or not related; committed by a person acting alone or in collusion with other persons, involving one or more instruments, during the Policy Period shown in the Declarations, except as provided under Condition **E.1.n.** or **E.1.o.**
- d. Under All Other Insuring Agreements:
 - (1) An individual act or event;
 - (2) The combined total of all separate acts or events whether or not related; or
 - (3) A series of acts or events whether or not related; committed by a person acting alone or in collusion with other persons, or not committed by any person, during the Policy Period shown in the Declarations, except as provided under Condition **E.1.n.** or **E.1.o.**
12. "Other property" means any tangible property other than "money" and "securities" that has intrinsic value. "Other property" does not include computer programs, electronic data or any property specifically excluded under this policy.
13. "Premises" means the interior of that portion of any building you occupy in conducting your business.
14. "Robbery" means the unlawful taking of property from the care and custody of a person by one who has:
 - a. Caused or threatened to cause that person bodily harm; or
 - b. Committed an obviously unlawful act witnessed by that person.
15. "Safe burglary" means the unlawful taking of:
 - a. Property from within a locked safe or vault by a person unlawfully entering the safe or vault as evidenced by marks of forcible entry upon its exterior; or
 - b. A safe or vault from inside the "premises".

- 16.** "Securities" means negotiable and nonnegotiable instruments or contracts representing either "money" or property and includes:
- a.** Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
 - b.** Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you;
- but does not include "money".
- 17.** "Theft" means the unlawful taking of property to the deprivation of the Insured.
- 18.** "Transfer account" means an account maintained by you at a financial institution from which you can initiate the transfer, payment or delivery of "funds":
- a.** By means of electronic, telegraphic, cable, teletype, telefacsimile or telephone instructions communicated directly through an electronic funds transfer system; or
 - b.** By means of written instructions (other than those described in Insuring Agreement **A.3.**) establishing the conditions under which such transfers are to be initiated by such financial institution through an electronic funds transfer system.
- 19.** "Watchperson" means any person you retain specifically to have care and custody of property inside the "premises" and who has no other duties.

SIGNATURES

Named Insured Hawaii Employer-Union Health Benefits Trust Fund			Endorsement Number 1
Policy Symbol DON	Policy Number G24581111 003	Policy Period 12/15/2011 to 12/15/2012	Effective Date of Endorsement 12/15/2011
Issued By (Name of Insurance Company) Westchester Fire Insurance Company			

THE ONLY SIGNATURES APPLICABLE TO THIS POLICY ARE THOSE REPRESENTING THE COMPANY NAMED ON THE FIRST PAGE OF THE DECLARATIONS.

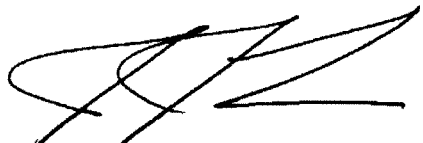
By signing and delivering the policy to you, we state that it is a valid contract.

INDEMNITY INSURANCE COMPANY OF NORTH AMERICA (A stock company)
BANKERS STANDARD FIRE AND MARINE COMPANY (A stock company)
BANKERS STANDARD INSURANCE COMPANY (A stock company)
ACE AMERICAN INSURANCE COMPANY (A stock company)
ACE PROPERTY AND CASUALTY INSURANCE COMPANY (A stock company)
INSURANCE COMPANY OF NORTH AMERICA (A stock company)
PACIFIC EMPLOYERS INSURANCE COMPANY (A stock company)
ACE FIRE UNDERWRITERS INSURANCE COMPANY (A stock company)
WESTCHESTER FIRE INSURANCE COMPANY (A stock company)

436 Walnut Street, P.O. Box 1000, Philadelphia, Pennsylvania 19106-3703



CARMINE A. GIGANTI, Secretary



JOHN J. LUPICA, President

Authorized Representative

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured Hawaii Employer-Union Health Benefits Trust Fund			Endorsement Number 2
Policy Symbol DON	Policy Number G24581111 003	Policy Period 12/15/2011 to 12/15/2012	Effective Date of Endorsement 12/15/2011
Issued By (Name of Insurance Company) Westchester Fire Insurance Company			

**POLICY CHANGE
(loss sustained form)**

This endorsement modifies insurance provided under the Loss Sustained Form version of the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
EMPLOYEE THEFT AND FORGERY POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY

SCHEDULE

Change Number	Date Of Issue	Effective Date Of Change
		12:01 A.M. on:

The Named Insured is changed to:

The following Insured(s) is added as a Named Insured:

Hawaii Medical Service Association (HMSA)
Health Management Associates (HMA)
Kaiser Permanente (Kaiser)
National Medical Health Card Systems, Inc (NMHC)
Hawaii Dental Service (HDS)
Vision Service Plan (VSP)
Royal State National Insurance Company, Ltd./ChiroPlan Hawaii, Inc. (ChiroPlan)
Royal State National Insurance Company, Ltd. (Royal State)
Standard Insurance Company (Standard)

And any employee benefit or welfare plan now existing or hereafter created or acquired, whether or not required to be bonded by the Employee Retirement Income Security Act of 1974, as amended by the Pension Protection Act of 2006.

The following Insured(s) is deleted as a Named Insured:

The Mailing Address is changed to:

The Policy Period is:

Extended to:

Reduced to:

The following Insuring Agreement(s) is:

____ Added to the Coverage Form/Policy

Insuring Agreement(s)	Limit Of Insurance	Deductible Amount
	\$	\$

Deleted from the Coverage Form/Policy

Insuring Agreement(s)	Limit Of Insurance	Deductible Amount
	\$	\$
	\$	\$

Changed as respects the Limit(s) of Insurance and/or Deductible Amount(s)

Insuring Agreement(s)	Limit Of Insurance	Deductible Amount
	\$	\$
	\$	\$

The following Endorsement(s) is:

Added to the Coverage Form/Policy

Endorsement(s)	Limit Of Insurance
	\$
	\$

Deleted from the Coverage Form/Policy

Endorsement(s)	Limit Of Insurance
	\$
	\$

Changed as respects the Limit(s) of Insurance

Endorsement(s)	Limit Of Insurance
	\$
	\$

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Application of changes affected by this Endorsement:

1. Addition Of Deductible Or Increase In Deductible Amount

This change applies to loss or damage that you sustain resulting directly from an "occurrence" taking place at any time, whether before or after the Effective Date of Change which is "discovered" by you after the Effective Date of change.

2. Deletion Of Coverage Or Decrease In Limit Of Insurance

This change applies to loss or damage that you sustain resulting directly from an "occurrence" taking place:

- a. On or after the Effective Date of Change which is "discovered" by you after the Effective Date of change; and also

- b. Before the Effective Date of Change if "discovered" by you after 1 year from that date.

3. All Changes Other Than In Paragraphs 1. And 2.

This change applies to loss or damage that you sustain resulting directly from an "occurrence" taking place on or after the Effective Date of Change which is "discovered" by you after the Effective Date of change.

Accepted

First Named Insured:

Name:

Title:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured Hawaii Employer-Union Health Benefits Trust Fund			Endorsement Number 3
Policy Symbol DON	Policy Number G24581111 003	Policy Period 12/15/2011 to 12/15/2012	Effective Date of Endorsement 12/15/2011
Issued By (Name of Insurance Company) Westchester Fire Insurance Company			

**INCLUDE DESIGNATED PERSONS OR CLASSES
OF PERSONS AS EMPLOYEES**

This endorsement modifies insurance provided under the following:

**COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
EMPLOYEE THEFT AND FORGERY POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY
GOVERNMENT EMPLOYEE THEFT AND FORGERY POLICY**

and applies to the Employee Theft Insuring Agreement:

SCHEDULE

Persons Or Classes Of Persons
All Non-Compensated Officers
Volunteers other than solicitors of funds
All Directors and Trustees
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The definition of "employee" is amended to include any natural person or group of persons named or described in the Schedule.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured Hawaii Employer-Union Health Benefits Trust Fund			Endorsement Number 4
Policy Symbol DON	Policy Number G24581111 003	Policy Period 12/15/2011 to 12/15/2012	Effective Date of Endorsement 12/15/2011
Issued By (Name of Insurance Company) Westchester Fire Insurance Company			

TRADE OR ECONOMIC SANCTIONS ENDORSEMENT

This insurance does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit us from providing insurance, including, but not limited to, the payment of claims. All other terms and conditions of the policy remain unchanged.



ROBERT B. PORTWOOD, Vice President

Authorized Agent



ACE Producer Compensation Practices & Policies

ACE believes that policyholders should have access to information about ACE's practices and policies related to the payment of compensation to brokers and independent agents. You can obtain that information by accessing our website at <http://www.aceproducercompensation.com> or by calling the following toll-free telephone number: 1-866-512-2862.



ace usa

U.S. Treasury Department's Office Of Foreign Assets Control ("OFAC") Advisory Notice to Policyholders

This Policyholder Notice shall not be construed as part of your policy and no coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

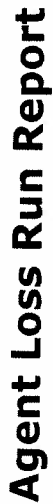
This Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous:

- Foreign agents;
- Front organizations;
- Terrorists;
- Terrorist organizations; and
- Narcotics traffickers;

as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's web site – <http://www.treas.gov/ofac>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.



Policy Number	G23632913	Policy Term	12/01/2006 - 12/01/2007
Insured Name	HAWAII EMPLOYER-UNION H		
Division	4 - PROFESSIONAL RISK GROUP	PAC	PBO - PUBLIC OFFICIALS
Master/Subsidiary Producer	161156 - AON RISK INSURANCE SERVICES WEST IN	MCC	0030100 - Errors and Omissions

BCO		Adjuster												
Claim		Supervisor												
Sub Ltr	Occurrence ID	Event Date	Made Date	Report Date	Close Date	Reopen Date	State	Desc	Claimant	Status	Gross Paid Loss	Gross Paid Expense	Gross Outstanding	Gross Incurred Loss
											\$0	\$0	*	*
Subtotal											\$0	\$0	*	*



Agent Loss Run Report

Policy Number	G23632913	Policy Term	12/01/2007 - 12/01/2008
Insured Name	HAWAII EMPLOYER-UNION H		
Division	4 - PROFESSIONAL RISK GROUP	PAC	PBO - PUBLIC OFFICIALS
Master/Subsidiary Producer	161156 - AON RISK INSURANCE SERVICES WEST IN	MCC	0030100 - Errors and Omissions

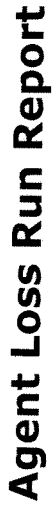
BCO		Adjuster												
Claim		Supervisor												
Sub Ltr	Occurrence ID	Event Date	Made Date	Report Date	Close Date	Reopen Date	State	Desc	Claimant	Status	Gross Paid Loss	Gross Paid Expense	Gross Outstanding	Gross Incurred Loss
											\$0	\$0	*	*
Subtotal											\$0	\$0	*	*



Agent Loss Run Report

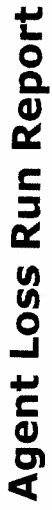
Policy Number	G23632913	Policy Term	12/01/2008 - 12/15/2009
Insured Name	HAWAII EMPLOYER-UNION H		
Division	4 - PROFESSIONAL RISK GROUP	PAC	PBO - PUBLIC OFFICIALS
Master/Subsidiary Producer	161156 - AON RISK INSURANCE SERVICES WEST IN	MCC	0030100 - Errors and Omissions

BCO	Adjuster										
Claim	Supervisor										
Sub Ltr	Occurrence ID	Event Date	Made Date	Report Date	Close Date	Reopen Date	State	Desc	Claimant	Status	Gross Paid Loss
											Gross Paid Expense
											\$0
											\$0
											*
											*
Subtotal											\$0
											*
											*



Policy Number	G23632913	Policy Term	12/15/2009 - 12/15/2010
Insured Name	HAWAII EMPLOYER-UNION H		
Division	4 - PROFESSIONAL RISK GROUP	PAC	PBO - PUBLIC OFFICIALS
Master/Subsidiary Producer	161156 - AON RISK INSURANCE SERVICES WEST IN	MCC	0030100 - Errors and Omissions

BCO		Adjuster												
Claim		Supervisor												
Sub Ltr	Occurrence ID	Event Date	Made Date	Report Date	Close Date	Reopen Date	State	Desc	Claimant	Status	Gross Paid Loss	Gross Paid Expense	Gross Outstanding	Gross Incurred Loss
											\$0	\$0	*	*
Subtotal											\$0	*	*	



Policy Number	G23632913	Policy Term	12/15/2010 - 12/15/2011
Insured Name	HAWAII EMPLOYER-UNION H		
Division	4 - PROFESSIONAL RISK GROUP	PAC	PBO - PUBLIC OFFICIALS
Master/Subsidiary Producer	161156 - AON RISK INSURANCE SERVICES WEST IN	MCC	0030100 - Errors and Omissions

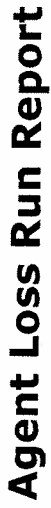
BCO		Adjuster															
Claim		Supervisor															
Sub Ltr	Occurrence ID	Event Date	Made Date	Report Date	Close Date	Reopen Date	State	Desc	Claimant	Status	Gross Paid Loss	Gross Paid Expense	Gross Outstanding	Gross Incurred Loss			
											\$0	\$0	*	*			
Subtotal											\$0	*	*				



Agent Loss Run Report

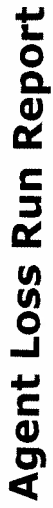
Policy Number	G23632913	Policy Term	12/15/2011 - 12/15/2012
Insured Name	HAWAII EMPLOYER-UNION H		
Division	4 - PROFESSIONAL RISK GROUP	PAC	PBO - PUBLIC OFFICIALS
Master/Subsidiary Producer	161156 - AON RISK INSURANCE SERVICES WEST IN	MCC	0030100 - Errors and Omissions

BCO		Adjuster												
Claim		Supervisor												
Sub Ltr	Occurrence ID	Event Date	Made Date	Report Date	Close Date	Reopen Date	State	Desc	Claimant	Status	Gross Paid Loss	Gross Paid Expense	Gross Outstanding	Gross Incurred Loss
											\$0	\$0	*	*
										Subtotal	\$0	\$0	*	*
										Grand Total	\$0	\$0	*	*



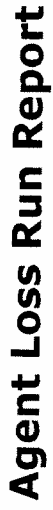
Policy Number	G24581111	Policy Term	12/01/2009 - 12/01/2010
Insured Name	Hawaii Employer-Union H		
Division	4 - PROFESSIONAL RISK GROUP	PAC	FID - FIDELITY
Master/Subsidiary Producer	173019 - AON RISK SERVICES INC OF HAWAII	MCC	0031400 - Private Company-Not For Profit

BCO		Adjuster												
Claim		Supervisor												
Sub Ltr	Occurrence ID	Event Date	Made Date	Report Date	Close Date	Reopen Date	State	Desc	Claimant	Status	Gross Paid Loss	Gross Paid Expense	Gross Outstanding	Gross Incurred Loss
											\$0	\$0	*	*
Subtotal											\$0	*	*	



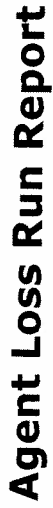
Policy Number	G24581111	Policy Term	12/15/2009 - 12/15/2010
Insured Name	Hawaii Employer-Union H		
Division	4 - PROFESSIONAL RISK GROUP	PAC	FID - FIDELITY
Master/Subsidiary Producer	173019 - AON RISK SERVICES INC OF HAWAII	MCC	0031400 - Private Company-Not For Profit

BCO		Adjuster												
Claim		Supervisor												
Sub Ltr	Occurrence ID	Event Date	Made Date	Report Date	Close Date	Reopen Date	State	Desc	Claimant	Status	Gross Paid Loss	Gross Paid Expense	Gross Outstanding	Gross Incurred Loss
											\$0	\$0	*	*
Subtotal											\$0	*	*	



Policy Number	G24581111	Policy Term	12/15/2010 - 12/15/2011
Insured Name	Hawaii Employer-Union H		
Division	4 - PROFESSIONAL RISK GROUP	PAC	FID - FIDELITY
Master/Subsidiary Producer	173019 - AON RISK SERVICES INC OF HAWAII	MCC	0031400 - Private Company-Not For Profit

BCO		Adjuster												
Claim		Supervisor												
Sub Ltr	Occurrence ID	Event Date	Made Date	Report Date	Close Date	Reopen Date	State	Desc	Claimant	Status	Gross Paid Loss	Gross Paid Expense	Gross Outstanding	Gross Incurred Loss
											\$0	\$0	*	*
Subtotal											\$0	*	*	



Policy Number	G24581111	Policy Term	12/15/2011 - 12/15/2012
Insured Name	Hawaii Employer-Union H		
Division	4 - PROFESSIONAL RISK GROUP	PAC	FID - FIDELITY
Master/Subsidiary Producer	173019 - AON RISK SERVICES INC OF HAWAII	MCC	0031400 - Private Company-Not For Profit

BCO		Adjuster												
Claim		Supervisor												
Sub Ltr	Occurrence ID	Event Date	Made Date	Report Date	Close Date	Reopen Date	State	Desc	Claimant	Status	Gross Paid Loss	Gross Paid Expense	Gross Outstanding	Gross Incurred Loss
											\$0	\$0	*	*
										Subtotal	\$0	\$0	*	*
										Grand Total	\$0	\$0	*	*



We compile claim information for our own business purpose and exercise reasonable care in doing so. Amounts reserved are based on our judgment. They are subject to change and should not be regarded as ultimate settlement values. We make no representation or warranties to insureds, insurers or others to whom this information is furnished.

Policy: EPG0006140

Insured: Hawaii Employer-Union Health Benefits Trust City, State Zip: HONOLULU, HI 96813
Fund

Term: 12/1/2006 - 12/1/2007 CLAIM DETAIL - None

Term: 12/1/2007 - 12/1/2008 CLAIM DETAIL - None



We compile claim information for our own business purpose and exercise reasonable care in doing so. Amounts reserved are based on our judgment. They are subject to change and should not be regarded as ultimate settlement values. We make no representation or warranties to insureds, insurers or others to whom this information is furnished.

Policy: EPG0008821

Insured: Hawaii Employer-Union Health Benefits Trust City, State Zip: HONOLULU, HI 96813
Fund

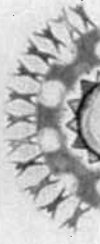
Term: 12/1/2008 - 12/15/2009 CLAIM DETAIL - None

We compile claim information for our own business purpose and exercise reasonable care in doing so. Amounts reserved are based on our judgment. They are subject to change and should not be regarded as ultimate settlement values. We make no representation or warranties to insureds, insurers or others to whom this information is furnished.

Policy: EPG0011096

Insured: Hawaii Employer-Union Health Benefits Trust City, State Zip: HONOLULU, HI 96813
Fund

Term: 12/15/2010 - 12/15/2011 CLAIM DETAIL - None

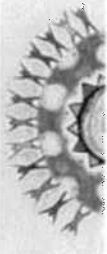


We compile claim information for our own business purpose and exercise reasonable care in doing so. Amounts reserved are based on our judgment. They are subject to change and should not be regarded as ultimate settlement values. We make no representation or warranties to insureds, insurers or others to whom this information is furnished.

Policy: EPG0011250

Insured: Hawaii Employer-Union Health Benefits Trust City, State Zip: HONOLULU, HI 96813
Fund

Term: 12/15/2011 - 12/15/2012 CLAIM DETAIL - None



We compile claim information for our own business purpose and exercise reasonable care in doing so. Amounts reserved are based on our judgment. They are subject to change and should not be regarded as ultimate settlement values. We make no representation or warranties to insureds, insurers or others to whom this information is furnished.

Policy: EPG0100076

Insured: Hawaii Employer-Union Health Benefits Trust City, State Zip: HONOLULU, HI 96813
Fund

Term: 12/15/2009 - 12/15/2010 CLAIM DETAIL - None

We compile claim information for our own business purpose and exercise reasonable care in doing so. Amounts reserved are based on our judgment. They are subject to change and should not be regarded as ultimate settlement values. We make no representation or warranties to insureds, insurers or others to whom this information is furnished.

GRAND TOTALS

Insured: Hawaii Employer-Union Health Benefits Trust City, State Zip: HONOLULU, HI 96813
Fund

Policy - Term	Total Claims	Indemnity		Expense		Recoveries		Totals		Total Reported Loss
		Reserve	Paid	Reserve	Paid	Deductible	Subro, Salvage, etc	Reserves	Paid Net Of Recoveries	
EPG0006140 - 12/1/2006 - 12/1/2007	0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
EPG0006140 - 12/1/2007 - 12/1/2008	0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
EPG0008821 - 12/1/2008 - 12/15/2009	0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
EPG0011096 - 12/15/2010 - 12/15/2011	0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
EPG0011250 - 12/15/2011 - 12/15/2012	0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
EPG0100076 - 12/15/2009 - 12/15/2010	0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total Policies: 5	0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

APPENDIX D

EUTF FINANCIAL STATEMENT

**HAWAII EMPLOYER-UNION
HEALTH BENEFITS TRUST FUND
STATE OF HAWAII**

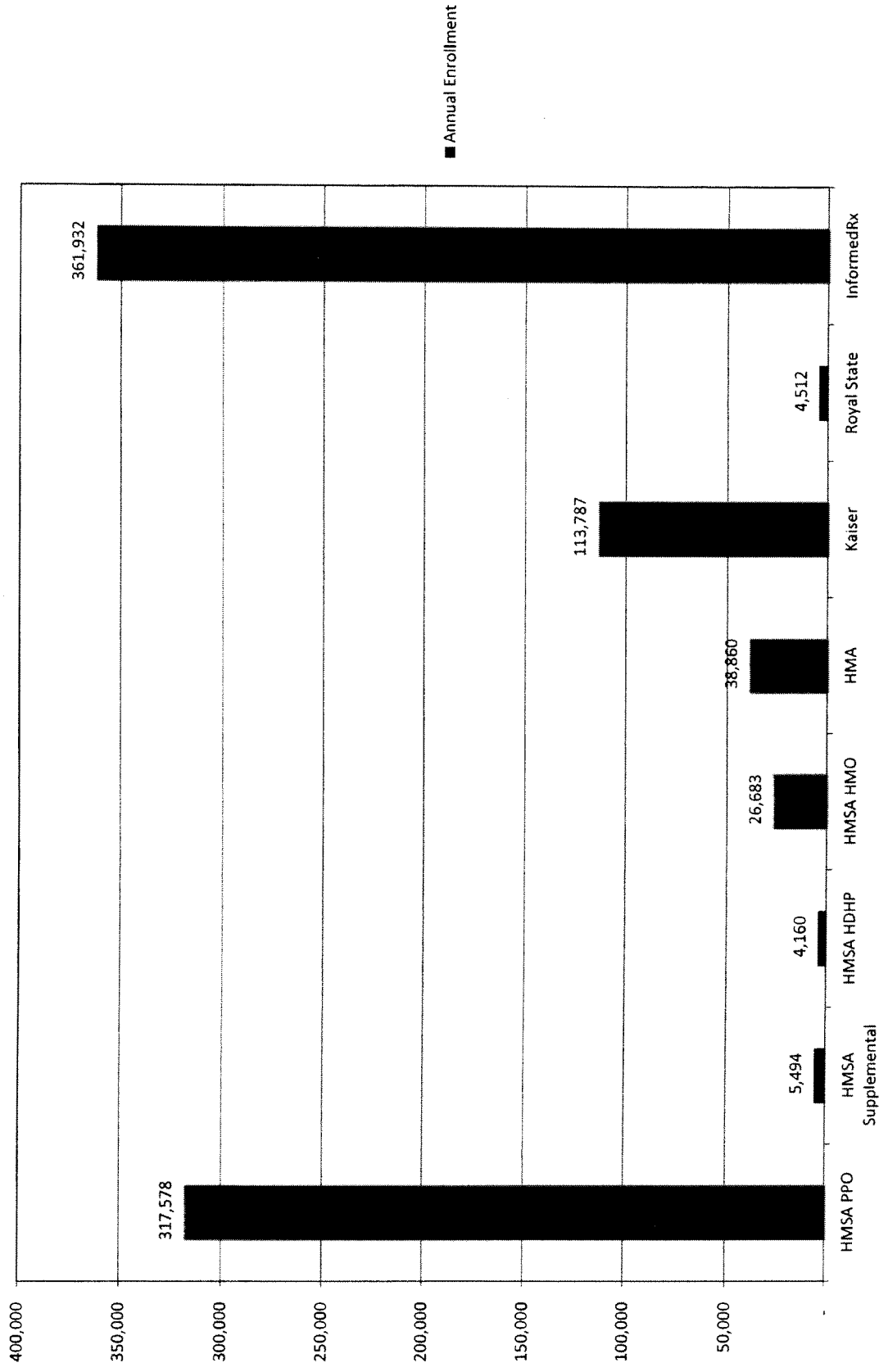
Annual Financial Report

June 30, 2011 and 2010

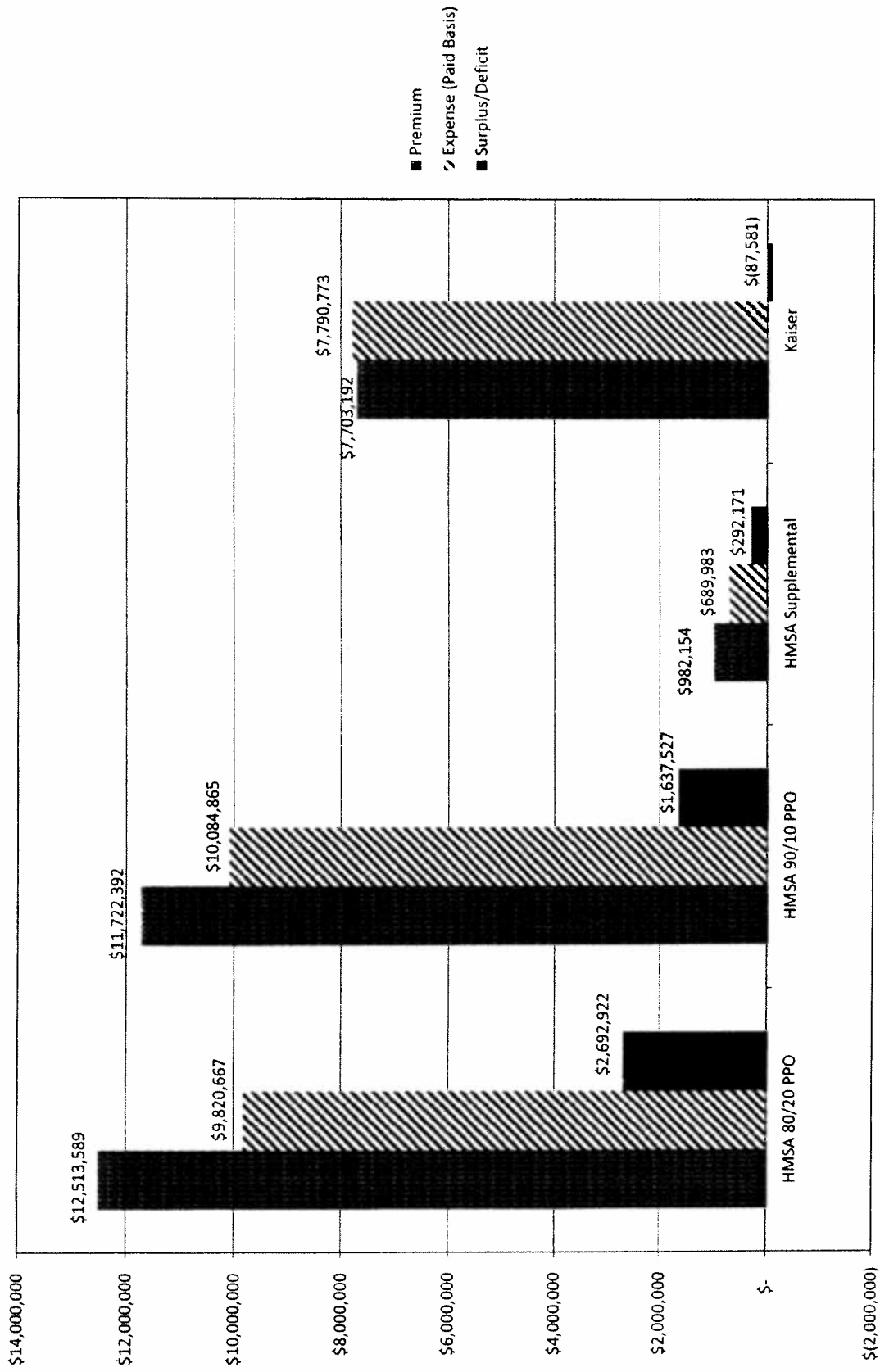


Certified Public Accountants.

Hawaii Employer-Union Health Benefits Trust Fund
 Annual Report as of June 30, 2011
 EUTF Active Medical and Prescription Drug Enrollment



Hawaii Employer-Union Health Benefits Trust Fund
Annual Report as of June 30, 2011
HSTA VB Active Medical Plan Experience



**HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
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Annual Financial Report**

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To the Board of Directors of
the Hawaii Employer-Union Health Benefits Trust Fund
of the State of Hawaii and
Ms. Marion Higa, State Auditor
State of Hawaii, Office of the Auditor
Honolulu, HI

Independent Auditor's Report

We have audited the accompanying statements of net assets (deficit) for the enterprise fund and fiduciary assets and liabilities for the agency fund of the Hawaii Employee-Union Health Benefits Trust Fund of the State of Hawaii (Trust Fund) as of June 30, 2011 and 2010, and the related statements of revenues, expenses and changes in net deficit, and cash flows for the enterprise fund for the years then ended. These financial statements are the responsibility of the Trust Fund's management. Our responsibility is to express opinions on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Trust Fund's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and the significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinions.

As discussed in Note 1, the financial statements of the Trust Fund are intended to present the financial position, and the changes in financial position and cash flows, of only that portion of the activities of the State of Hawaii that is attributable to the transactions of the Trust Fund. They do not purport to, and do not present fairly the financial position of the State of Hawaii as of June 30, 2011 and 2010, and the changes in its financial position and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the enterprise fund and agency fund of the Trust Fund as of June 30, 2011 and 2010, and the respective changes in financial position and, where applicable, cash flows thereof for the years then ended in conformity with accounting principles generally accepted in the United States of America.

In accordance with *Government Auditing Standards*, we have also issued our report dated February 8 2012, on our consideration of the Trust Fund's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters for the year ended June 30, 2011. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to

provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis and the Four-Year Loss Development Information identified in the accompanying table of contents be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information, because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the Trust Fund's basic financial statements as a whole. The Schedule of Administrative Operating Expenses – Enterprise Fund and the Schedule of Changes in Fiduciary Assets and Liabilities (Schedules) listed as supplementary information in the table of contents are presented for purposes of additional analysis and are not a required part of the basic financial statements. The supplementary information is the responsibility of management and was derived from, and relates directly to, the underlying accounting and other records used to prepare the financial statements. These Schedules have been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the basic financial statements as a whole.

Macias Jini & O'Connell LLP

Newport Beach, California
February 8, 2012

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
STATE OF HAWAII

Management's Discussion and Analysis
(Required Supplementary Information – Unaudited)
June 30, 2011 and 2010

This section of the Hawaii Employer-Union Health Benefits Trust Fund of the State of Hawaii (Trust Fund) financial report presents the reader with an introduction and overview of the Trust Fund's financial performance for the years ended June 30, 2011 and 2010. This discussion has been prepared by management and should be read in connection with the financial statements and the notes thereto, which follow this section.

Chapter 87A of the Hawaii Revised Statutes (HRS) established the Trust Fund. The Trust Fund is the state agency that provides eligible State of Hawaii (State) and County (Honolulu, Hawaii, Maui and Kauai) employees and retirees and their eligible dependents with health and life insurance benefits at a cost affordable to both the public employers and participants beginning July 1, 2003. HRS Chapter 87 that established the Hawaii Public Employees Health Fund (Health Fund) was repealed and the net assets of the Health Fund were transferred to the Trust Fund.

During 2007, the Trust Fund adopted Governmental Accounting Standards Board Statement No. 43, *Financial Reporting for Postemployment Benefit Plans Other than Pensions* (GASB 43). GASB 43 establishes accounting and financial reporting standards for plans that provide other postemployment benefits (OPEB) other than pensions. GASB 43 requires a statement of plan net assets and a statement of changes in plan net assets for defined benefit OPEB plans that are administered as trusts or equivalent arrangements. However, if an OPEB plan is not administered as a trust or equivalent arrangement it is required to be reported as an agency fund.

Further, the reporting of active employee and retiree (including their respective beneficiaries) healthcare benefits provided through the same plan should separate the two benefits for accounting purposes between active employee and retiree healthcare benefits. Accordingly, the Trust Fund reports the retiree healthcare benefits as OPEB in conformity with GASB 43 and the active employee healthcare benefits as risk financing in conformity with adopted Governmental Accounting Standards Board Statement No. 10, *Accounting and Financial Reporting for Risk Financing and Related Insurance Issues* (GASB 10) as amended.

In August 2006, the Trust Fund issued a Request for Proposals seeking proposals to provide benefit plans effective July 1, 2007. The evaluation committee recommended and the Board of Trustees approved the award of contracts for twelve benefit plans for the period July 1, 2007 through June 30, 2009.

Beginning July 1, 2007 the Trust Fund began offering self-funded medical and prescription drug plans in addition to the fully insured HMO plan. Under self-funded arrangements, the Trust Fund contracts with plan administrators for provider networks, claims processing, cost containment and other services. Instead of premiums, the Trust Fund pays administrative fees to the contractor and reimburses the contractor only for claims paid.

The Board of Trustees approved exercising its option to extend the contract for two years (July 1, 2009 through June 30, 2011) for Hawaii Dental Service, Hawaii Medical Service Association, Health Management Associates, Kaiser Foundation Health Plan, Inc., Royal State National Insurance Company, Vision Service Plan and for two one year extensions (July 1, 2009, through June 30, 2010, and July 1, 2010, through June 30, 2011) for informedRx and Standard Life Insurance.

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
STATE OF HAWAII

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(Required Supplementary Information – Unaudited)
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Effective February 1, 2010, the Trust Fund Board of Trustees approved a new 80/20 PPO plan administered by Hawaii Medical Service Association (HMSA). The 90/10 PPO plan was administered by Health Management Associates (HMA).

Act 245, Session Laws of Hawaii (SLH) 2005 (partially codified as HRS Chapter 87D), temporarily authorized employee organizations to establish voluntary employees beneficiary association (VEBA) trusts to provide health benefits to state and county employees in their bargaining units outside of the Trust Fund. It established a three-year pilot program to allow for the analysis of the costs and benefits of a VEBA trust against those of the Trust Fund. Effective March 1, 2006, the Hawaii State Teachers Association (HSTA) implemented the three-year pilot program. As a result, all active HSTA employees were enrolled in the VEBA trust and subsequently cancelled from the Trust Fund's health benefit plans. Act 245's sunset dates were amended three times: July 1, 2009, July 1, 2010 and December 31, 2010.

In addition, Chapter 87D of the Hawaii Revised Statutes, which authorized the establishment of the VEBA, also included the option for HSTA retirees to make a one-time choice to either remain with the Trust Fund or transfer to the HSTA VEBA benefit plans. The option period was from October through November 2006. As a result, approximately 1,400 HSTA retirees transferred to the HSTA VEBA. HSTA employees that retired on or after March 1, 2006 were required to be enrolled with the HSTA VEBA.

As a result of Act 245 sun setting on December 31, 2010, effective January 1, 2011, approximately, 12,500 HSTA VEBA active employees and 2,500 retirees were transferred to the Trust Fund. In December 2010, Judge Sakamoto (Kona, et al v Abercrombie, Civil No. 10-1-1966-09 KKS) ruled that HSTA VEBA members (actives and retirees) were entitled to the same standard of coverage in benefits when they were transitioned to the Trust Fund on January 1, 2011. The enrollment of HSTA VEBA members into these new Trust Fund-created health and other benefit plans was done solely to comply with Judge Sakamoto's ruling and does not create any constitutional or contractual right to the benefits by these plans. The State does not agree with Judge Sakamoto's ruling. If Judge Sakamoto's ruling is overturned, stayed, or modified, the Trust Fund reserves the right to move HSTA VEBA members into regular Trust Fund plans. See further discussion in Note 9 to the financial statements.

OVERVIEW OF THE FINANCIAL STATEMENTS

The financial statements of the Trust Fund include the following statements:

Enterprise Fund - Active Employee Healthcare Benefits

Statement of net assets (deficit) - This statement summarizes the assets and liabilities and presents an overall picture of the financial position.

Statement of revenue, expenses and changes in net deficit – This statement summarizes the financial results of the operations for the year.

Statement of cash flows – This statement identifies the sources and uses of cash.

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
STATE OF HAWAII

Management's Discussion and Analysis
(Required Supplementary Information – Unaudited)
June 30, 2011 and 2010

Agency Fund - Retiree Healthcare Benefits

Statement of fiduciary assets and liabilities - This statement summarizes the financial position of the OPEB plan assets and liabilities reported as an agency fund.

FINANCIAL HIGHLIGHTS

For the year ended June 30, 2011, the Trust Fund collected in the aggregate \$592,493,336 and \$165,914,796 in employer and employee contributions for the health benefit plans and Medicare Part B premium reimbursements, respectively, and paid carriers in the aggregate \$184,408,814 and \$442,031,638 and retirees \$47,217,116 in premiums, self-insured claims and Medicare Part B premium reimbursements, respectively, for the year ended June 30, 2011. The monthly premiums for the Trust Fund's benefit plans include administrative fees that are intended to cover the Trust Fund's administrative expenses. The aggregated administrative fees collected from the employers totaled \$5,431,271 for the year ended June 30, 2011. The Trust Fund reported \$4,187,438 for carrier retrospective premiums payable as of June 30, 2011.

For the year ended June 30, 2010, the Trust Fund collected in the aggregate \$513,232,601 and \$160,081,601 in employer and employee contributions for the health benefit plans and Medicare reimbursements, respectively, and paid carriers in the aggregate \$157,684,549 and \$433,599,594 and retirees \$44,830,546 in premiums, self-insured claims and Medicare reimbursements, respectively, for the year ended June 30, 2010. The monthly premiums for the Trust Fund's benefit plans include administrative fees that are intended to cover the Trust Fund's administrative expenses. The aggregated administrative fees collected from the employers totaled approximately \$5,117,032 for the year ended June 30, 2010. The Trust Fund reported \$1,268,524 for carrier retrospective premiums payable as of June 30, 2010.

The administrative expenses budgeted for the Trust Fund totaled approximately \$4,908,426 for the year ended June 30, 2011. Actual administrative operating expenses for the enterprise fund totaled \$4,627,726 for the year ended June 30, 2011. The expenses included \$2,034,019 for personnel services; \$1,958,482 for consultant services; \$37,344 for equipment; \$306,199 for lease rent; and \$291,682 for other expenses such as open enrollment, office supplies, telephone, travel, repairs and maintenance, copier rental and postage for the year ended June 30, 2011.

The administrative expenses budgeted for the Trust Fund totaled approximately \$5,212,288 for the year ended June 30, 2010. Actual administrative operating expenses for the enterprise fund totaled \$4,334,911 for the year ended June 30, 2010. The expenses included \$1,668,784 for personnel services; \$1,787,862 for consultant services; \$179,828 for equipment; \$314,994 for lease rent; and \$383,443 for other expenses such as open enrollment, office supplies, telephone, travel, repairs and maintenance, copier rental and postage for the year ended June 30, 2010.

For the year ended June 30, 2010, the presentation of the operations of the self-insured plans for active employees reported in the enterprise fund was changed to show the aggregate amount of premium revenues recognized as operating revenues and related benefit claims expense incurred as operating expenses. This change was a result of the financial reporting criteria of GASB Statement No. 10, *Accounting and Financial Reporting for Risk Financing and Related Insurance Issues* (GASB 10), where the risk of

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
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Management's Discussion and Analysis
(Required Supplementary Information – Unaudited)
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loss for these self-insured plans transfers from the employers to the Trust Fund, thus the activity should be reported in aggregate in the statement of revenues, expenses and changes in net deficit. The 2009 amounts in the Financial Analysis section below have been restated to reflect this change in order to be comparable to the 2010 amounts.

FINANCIAL ANALYSIS

Enterprise Fund

A summary of the Trust Fund's net assets (deficit) for active employees is shown below as of June 30, 2011 and 2010:

	2011	2010	Change	% Change
Assets				
Current assets	\$ 54,294,191	\$ 36,830,892	\$ 17,463,299	47.4%
Capital assets	<u>7,217,258</u>	<u>8,658,429</u>	<u>(1,441,171)</u>	-16.6%
Total assets	<u>61,511,449</u>	<u>45,489,321</u>	<u>16,022,128</u>	35.2%
Liabilities				
Current liabilities	62,685,806	49,734,089	12,951,717	26.0%
Long-term liabilities	<u>901,744</u>	<u>680,580</u>	<u>221,164</u>	32.5%
Total liabilities	<u>63,587,550</u>	<u>50,414,669</u>	<u>13,172,881</u>	26.1%
Net assets (deficit)				
Invested in capital assets	7,217,258	8,658,429	(1,441,171)	-16.6%
Unrestricted	<u>(9,293,359)</u>	<u>(13,583,777)</u>	<u>4,290,418</u>	31.6%
Total net deficit	<u>\$ (2,076,101)</u>	<u>\$ (4,925,348)</u>	<u>\$ 2,849,247</u>	57.8%

The enterprise fund's total assets increased by approximately \$16.0 million or 35.2% during the fiscal year ended June 30, 2011. The increase is primarily attributable to the following: 1) an increase of approximately \$8 million to the premiums receivable from State of Hawaii and Counties due to an increase to active employee rates effective March 1, 2011, and effective January 1, 2011, the enrollment of approximately 12,500 HSTA VEBA actives and 2,500 HSTA VEBA retirees into the trust fund; and 2) an increase in cash and cash equivalents of approximately \$10.2 million due lower than projected claim benefit payments in the self-funded accounts.

The enterprise fund's total liabilities increased by approximately \$13.2 million or 26.1% during the fiscal year ended June 30, 2011. The increase was attributable to the following: 1) an increase to the retrospective premium payable of approximately \$2 million, which represents 5% of premiums held back by the Trust Fund as an estimated contingency in the event the Trust Fund incurs expenses greater than premiums paid., 2) an increase to the premiums payable account in the amount of approximately \$7.2 million due to the HSTA VEBA members enrollment into the Trust Fund, 3) an increase in the benefit claims payable in the amount of approximately \$3.1 million

There was approximately \$2.8 million or 57.8% reduction of the Total Net Deficit for the year ended June 30, 2011. This is primarily attributable to a \$3.9 million net decrease in self-insured claims expense and

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
STATE OF HAWAII

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change in incurred but not reported claims expense, off-set by a decrease in self-insured premium revenues of \$10.0 million.

A summary of the Trust Fund's net assets (deficit) for active employees is shown below as of June 30, 2010 and 2009:

	2010	2009*	Change	% Change
Assets				
Current assets	\$ 36,830,892	\$ 32,496,347	\$ 4,334,545	13.3%
Capital assets	8,658,429	6,554,713	2,103,716	32.1%
Total assets	<u>45,489,321</u>	<u>39,051,060</u>	<u>6,438,261</u>	16.5%
Liabilities				
Current liabilities	49,734,089	56,296,172	(6,562,083)	-11.7%
Long-term liabilities	680,580	424,620	255,960	60.3%
Total liabilities	<u>50,414,669</u>	<u>56,720,792</u>	<u>(6,306,123)</u>	-11.1%
Net assets (deficit)				
Invested in capital assets	8,658,429	6,554,713	2,103,716	32.1%
Unrestricted	<u>(13,583,777)</u>	<u>(24,224,445)</u>	<u>10,640,668</u>	43.9%
Total net deficit	<u>\$ (4,925,348)</u>	<u>\$ (17,669,732)</u>	<u>\$ 12,744,384</u>	72.1%

* 2009 balances were restated to reflect amounts reclassified from the agency fund to the enterprise fund to better account for and report administrative costs to administer the Trust Fund. Balances affected include capital assets, current assets and current liabilities.

The enterprise fund's total assets increased by approximately \$6.4 million or 16.5% during the fiscal year ended June 30, 2010. The increase is primarily attributable to the following: 1) an increase to active employee rates effective July 1, 2009, caused an increase of approximately \$4.2 million to the premiums receivable from State of Hawaii and Counties, 2) an increase of approximately \$2.3 million in deposits to HMA due to the increase in enrollment count for the 90/10 PPO plan effective February 1, 2010, 3) an increase of approximately \$3.0 million in the capital assets due to the implementation of the new Benefits Administration System effective September 2009.

The enterprise fund's total liabilities decreased by approximately \$6.3 million or 11.1% during the fiscal year ended June 30, 2010. The decrease is primarily attributable to the decrease of approximately \$7.7 million in benefit claims liability payable to the self-funded carriers. There was also an increase in Trust Fund's OPEB liability.

There was approximately \$12.7 million or 72.1% reduction of the Total Net Deficit for the year ended June 30, 2010. This is primarily attributable to the \$14.6 million decrease in claims expense which caused a net gain in the self-funded plans.

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
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Management's Discussion and Analysis
(Required Supplementary Information – Unaudited)
June 30, 2011 and 2010

A summary of changes in net deficit for the years ended June 30, 2011 and 2010, for active employees follows:

	<u>2011</u>	<u>2010*</u>	<u>Change</u>	<u>% Change</u>
Revenues				
Operating revenues	\$ 248,953,635	\$ 258,717,861	\$ (9,764,226)	-3.8%
Nonoperating revenues	<u>1,147,445</u>	<u>4,348,544</u>	<u>(3,201,099)</u>	-73.6%
Total revenues	<u>250,101,080</u>	<u>263,066,405</u>	<u>(12,965,325)</u>	-4.9%
Expenses				
Operating expenses	<u>247,251,833</u>	<u>250,322,021</u>	<u>(3,070,188)</u>	-1.2%
Total expenses	<u>247,251,833</u>	<u>250,322,021</u>	<u>(3,070,188)</u>	-1.2%
Increase (decrease) in net assets	2,849,247	12,744,384	(9,895,137)	77.6%
Net deficit at beginning of year, as restated	<u>(4,925,348)</u>	<u>(17,669,732)</u>	<u>12,744,384</u>	-72.1%
Total net deficit at end of year	<u>\$ (2,076,101)</u>	<u>\$ (4,925,348)</u>	<u>\$ 2,849,247</u>	57.8%

The enterprise fund's total revenues decreased by approximately \$13.0 million or 4.9% for fiscal year ended June 30, 2011. The enterprise fund's operating revenues decreased due to the decrease in premium revenue for self insurance plans. In February 2010, the Trust Fund offered a new HMSA 80/20 PPO plan. This plan had lower premiums than the 90/10 PPO plan and was the prevalent plan. The nonoperating revenues decreased due to \$3.2 million decrease of subsidy from the agency fund and interest income.

The enterprise fund's operating expenses decreased by approximately \$3.1 million or 1.2% for fiscal year ended June 30, 2011. There was approximately \$7.9 million decrease in claims expenses and \$4.0 million increase in incurred but not reported claims.

The enterprise fund's total net deficit changed by approximately \$2.8 million or 57.8% for fiscal year ended June 30, 2011. This is primarily attributable to a \$3.9 million net decrease in self-insured claims expense and change in incurred but not reported claims expense due to the addition of the HMSA 80/20 PPO plan effective February 1, 2010, off-set by a decrease in self-insured premium revenues of \$10.0 million.

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
STATE OF HAWAII

Management's Discussion and Analysis
(Required Supplementary Information – Unaudited)
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A summary of changes in net deficit for the years ended June 30, 2010 and 2009, for active employees follows:

	2010	2009*	Change	% Change
Revenues				
Operating revenues	\$ 258,717,861	\$ 225,420,482	\$ 33,297,379	14.8%
Nonoperating revenues	4,348,544	15,063,335	(10,714,791)	-71.1%
Total revenues	<u>263,066,405</u>	<u>240,483,817</u>	<u>22,582,588</u>	9.4%
Expenses				
Operating expenses	250,322,021	272,534,878	(22,212,857)	-8.2%
Total expenses	<u>250,322,021</u>	<u>272,534,878</u>	<u>(22,212,857)</u>	-8.2%
Increase (decrease) in net assets	12,744,384	(32,051,061)	44,795,445	139.8%
Net deficit at beginning of year, as restated	<u>(17,669,732)</u>	<u>14,381,329</u>	<u>(32,051,061)</u>	-222.9%
Total net deficit at end of year	<u>\$ (4,925,348)</u>	<u>\$ (17,669,732)</u>	<u>\$ 12,744,384</u>	72.1%

* 2009 balances were restated to reclassify revenues related to self-insured plans as operating revenues and related claims expense as operating expenses. In addition, amounts previously reported as transfers are now classified as nonoperating revenues. Furthermore, amounts were reclassified from the agency fund to the enterprise fund to better account for and report administrative costs to administer the Trust Fund. Balances affected by the reclassification of agency fund activity include operating revenues and operating expenses.

The enterprise fund's total revenues increased by approximately \$22.6 million or 9.4% for fiscal year ended June 30, 2011. The enterprise fund's operating revenues increased due to the increase in active employee rates effective July 1, 2009. The nonoperating revenues decreased due to \$12.6 million decrease of subsidy from the agency fund.

The enterprise fund's operating expenses decreased by approximately \$22.2 million or 8.2% for fiscal year ended June 30, 2011. There was approximately \$900,000 increase in informedRx prescription drug rebate, \$14.6 million decrease in claims expenses and \$3.3 million decrease in incurred but not reported claims.

The enterprise fund's total net deficit changed by approximately \$12.7 million or 72.1% for fiscal year ended June 30, 2011. This increase is attributable to the increase of active employee rates effective July 1, 2009, and the addition of the 80/20 PPO plan effective February 1, 2010.

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
STATE OF HAWAII

Management's Discussion and Analysis
(Required Supplementary Information – Unaudited)
June 30, 2011 and 2010

Agency Fund

A summary of the Trust Fund's plan assets and liabilities for retirees is shown below as of June 30, 2011 and 2010:

	2011	2010	Change	% Change
Assets:				
Cash and cash equivalents	\$ 90,800,499	\$ 49,889,100	\$ 40,911,399	82.0%
Cash and cash equivalents - pre-funding deposits	-	135,182,090	(135,182,090)	-100.0%
Cash and investments held by fiscal agent	169,272,987	-	169,272,987	n/a
Receivables	37,806,413	31,098,553	6,707,860	21.6%
Deposits	10,248,076	10,248,076	-	0.0%
Total assets	<u>\$ 308,127,975</u>	<u>\$ 226,417,819</u>	<u>\$ 81,710,156</u>	36.1%
Liabilities:				
Premiums payables	\$ 7,921,812	\$ 5,716,500	\$ 2,205,312	38.6%
Benefit claims payable	15,275,791	12,867,761	2,408,030	18.7%
Amounts held on behalf of employers for benefits	282,990,527	206,816,699	76,173,828	36.8%
Other	1,939,845	1,016,859	922,986	90.8%
Total liabilities	<u>\$ 308,127,975</u>	<u>\$ 226,417,819</u>	<u>\$ 81,710,156</u>	36.1%

The agency fund's cash and cash equivalents increase of approximately \$40.9 million was mainly attributable to the net experience gain of self-funded plans for retirees. The net gain increase was approximately \$29.0 million. There also was a \$0.58 million write-up of investments held in the State investment pool. At the end of fiscal year ended June 30, 2011, the OPEB pre-funding deposits by various employers were being held by a fiscal agent. The \$34.1 million, net of the agency fund's cash and cash equivalents – pre funding deposits decrease of approximately \$135.2 million, offset with the agency fund's cash and investment held by fiscal agent increase of approximately \$169.3 million was attributable to the collection of pre-funding deposits for OPEB by various employers. The agency fund's receivables account increase of \$6.7 million was attributable to the increase in retiree rates effective January 1, 2011.

The agency fund's premiums payable increase of approximately \$2.2 million was due to the increase in retiree rates. The agency fund's benefit claims payable increase of approximately \$2.4 million was attributable to an increase in premiums and the addition of the participants in the HSTA VEBA Trust for fiscal year ended June 30, 2011. The amounts held on behalf of employees for benefits increase of approximately \$76.9 million was attributable to the following: 1) an increase in OPEB pre-funding deposits by various employers, 2) write-up of investments held in State investment pool, 3) increase in net gain from the self-funded plans due to the increase in premium revenue being more than the increase in benefit claims expenses.

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
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Management's Discussion and Analysis
(Required Supplementary Information – Unaudited)
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A summary of the Trust Fund's plan assets and liabilities for retirees is shown below as of June 30, 2010 and 2009:

	2010	2009*	Change	% Change
Assets:				
Cash and cash equivalents	\$ 49,889,100	\$ 32,159,322	\$ 17,729,778	55.1%
Cash and cash equivalents - pre-funding deposits	135,182,090	93,707,587	41,474,503	44.3%
Receivables	31,098,553	27,041,670	4,056,883	15.0%
Deposits	10,248,076	10,092,000	156,076	1.5%
Total assets	<u>\$ 226,417,819</u>	<u>\$ 163,000,579</u>	<u>\$ 63,417,240</u>	38.9%
Liabilities:				
Premiums payables	\$ 5,716,500	\$ 4,688,210	\$ 1,028,290	21.9%
Benefit claims payable	12,867,761	14,318,267	(1,450,506)	-10.1%
Amounts held on behalf of employers for benefits	206,816,699	142,948,269	63,868,430	44.7%
Other	1,016,859	1,045,833	(28,974)	-2.8%
Total liabilities	<u>\$ 226,417,819</u>	<u>\$ 163,000,579</u>	<u>\$ 63,417,240</u>	38.9%

* 2009 balances were restated to reflect amounts reclassified from the agency fund to the enterprise fund to better account for and report administrative costs to administer the Trust Fund. The agency fund no longer reports prepaid expenses, capital assets, vouchers and contracts payable, accrued wages and employee benefits, and compensated absences.

The agency fund's cash and cash equivalents increase of approximately \$17.7 million was mainly attributable to the decrease of approximately \$11.4 million in claims expenses during the year and a \$1.2 million write-up of investments held in the State investment pool. The agency fund's cash and cash equivalents – pre funding deposits increase of approximately \$41.5 million was attributable to the collection of pre-funding deposits for OPEB by various employers. The agency fund's receivables account increase of \$4.1 million was attributable to the increase in retiree rates effective July 1, 2009 and January 1, 2010.

The agency fund's premiums payable increase of approximately \$1.0 million was due to the increase in retiree rates. The agency fund's benefit claims payable decrease of approximately \$1.4 million was attributable to lower claims expenses for fiscal year ended June 30, 2010. The amounts held on behalf of employees for benefits increase of approximately \$63.9 million was attributable to the following: 1) an increase in OPEB pre-funding deposits by various employers, 2) write-up of investments held in State investment pool, 3) increase in net gain from the self-funded plans due to a decrease in benefit claims expenses and increase in premium revenue.

CAPITAL ASSETS

The aggregated net asset value of capital assets was \$7,217,258 at June 30, 2011. The aggregated depreciation expense totaled \$1,547,140 for the year ended June 30, 2011. The Trust Fund acquired \$106,000 in computer hardware/equipment related to its disaster recovery contingency plan. There were no disposals of capital assets during fiscal year 2011.

The aggregated net asset value of capital assets was \$8,658,429 at June 30, 2010. The aggregated depreciation expense totaled \$914,118 for the year ended June 30, 2010. In August 2007, the Trust Fund

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issued a Request for Proposal seeking proposals to furnish a benefits administration system implementation and maintenance services. The evaluation committee recommended and the Board of Trustees approved the award of a contract to provide, implement and maintain a Benefits Administration System for the Trust Fund. The new Benefits Administration System was implemented in September 2009.

ECONOMIC FACTORS AFFECTING NEXT YEAR

Factors Affecting 2012

The carrier contracts for the active employees and retiree plans for the Trust Fund, including contracts for HSTA participants were extended from July 1, 2011, through December 27, 2011, and again from December 28, 2011, through December 31, 2011. Approvals were received from the State Procurement Office to extend these contracts. In addition contracts for prescription drug plans were extended for six months from January 1, 2012. In April 2011, the Trust Fund issued Request for Proposals seeking proposals to provide medical, prescription drug, dental, vision and life benefit plans effective January 1, 2012. The evaluation committee made recommendations in June 2011 and July 2011, to the Board of Trustees, which approved awards of contracts for all plans. A procurement protest was filed by the Trust Fund's current carrier challenging the awards for the prescription drug plans. In December 2011, the State's hearings officer rendered a decision and affirmed the award of the contract to the carrier selected by the Board of Trustees for the active employees and non-Medicare retirees. The Trust Fund will implement effective May 1, 2012. The contract award for Medicare eligible retirees was vacated and sent back to the evaluation committee. In January 2012, the evaluation committee made a recommendation to the Board of Trustees which approved the award of the contract for prescription drug plan for Medicare eligible retirees.

The current self-funded arrangement with the medical plans (HMSA) will change to participating fully insured plans effective January 1, 2012. The dental and vision plans were changed from retrospective premium plans to participating fully insured plans. The Prescription drug plan will be the only plan with a self-funded arrangement effective January 1, 2012.

The Federal Affordable Care Act became effective July 1, 2011 for the Trust Fund's active employee plan. The plan lost its grandfather status due to the increase in the employees' share of premiums effective the same day. The definition of dependent child was expanded to age 26 and requirements that the child be unmarried and a full time student were dropped. Additional dependents were enrolled as a result.

Under GASB 43, the Trust Fund does not meet the criteria of a trust fund, therefore, deposits made by employers to the Trust Fund do not meet the criteria of contributions to other postemployment benefits (OPEB) that may be considered an asset to offset the liability. The Trust Fund submitted legislation to the 2012 Legislature (HB2491 and SB2753) to administer a separate trust fund for the purpose of receiving employer contributions that will prefund OPEB costs for retirees and their beneficiaries.

Factors Affecting 2011

Effective January 1, 2011, the Hawaii State Teacher's Association (HSTA) voluntary employees beneficiary association (VEBA) health benefit plan was terminated and all employees will receive

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STATE OF HAWAII

Management's Discussion and Analysis
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benefits through the Trust Fund. Approximately, 12,500 HSTA VEBA active employees and 2,500 retirees were transferred to the Trust Fund. In December 2010, Judge Sakamoto ruled that HSTA VEBA members (actives and retirees) were entitled to the same standard of coverage in benefits when they were transitioned to the Trust Fund on January 1, 2011.

REQUEST FOR INFORMATION

This financial report is designed to provide the Board of Trustees, State Auditor, and our membership, with a general overview of the Trust Fund's finances and to account for the money it receives. Questions concerning any of the information provided in this report or requests for additional financial information should be addressed to:

Hawaii Employer-Union Health Benefits Trust Fund
P.O. Box 2121
Honolulu Hawaii 96805-2121

Respectfully Submitted,

Barbara Coriell
Administrator

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**HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
STATE OF HAWAII**

ENTERPRISE FUND

Statements of Net Assets (Deficit)
June 30, 2011 and 2010

	<u>2011</u>	<u>2010</u>
Assets		
Current assets		
Cash and cash equivalents (Note 3)	\$ 10,205,190	\$ -
Receivables		
Premiums receivable from State of Hawaii and counties	31,071,398	23,024,861
Other receivables held by insurance companies (Note 5)	260,576	31,696
Rebates receivable (Note 5)	908,865	1,755,967
Accrued interest receivable	96,552	328,172
Prepaid expenses	242,930	181,516
Deposits (Note 6)	<u>11,508,680</u>	<u>11,508,680</u>
Total current assets	54,294,191	36,830,892
Capital assets, net of accumulated depreciation of \$6,527,399 in 2011 and \$4,980,259 in 2010 (Note 4)	<u>7,217,258</u>	<u>8,658,429</u>
Total assets	<u>61,511,449</u>	<u>45,489,321</u>
Liabilities		
Current Liabilities		
Vouchers and contracts payable	320,041	108,345
Accrued wages and employee benefits payable	181,006	109,786
Due to State of Hawaii	21,360	196,075
Due to employees	1,219,222	669,224
Retrospective premiums payable (Note 5)	2,254,527	254,142
Premiums payable (Note 5)	17,228,808	10,026,690
Benefit claims payable (Note 6)	41,392,678	38,334,060
Compensated absences, current portion	<u>68,164</u>	<u>35,767</u>
Total current liabilities	62,685,806	49,734,089
Noncurrent Liabilities		
Compensated absences (Note 2)	166,546	136,890
Other post-employment benefits (Note 8B)	<u>735,198</u>	<u>543,690</u>
Total liabilities	<u>63,587,550</u>	<u>50,414,669</u>
Net Assets (Deficit)		
Net assets		
Invested in capital assets	7,217,258	8,658,429
Unrestricted	<u>(9,293,359)</u>	<u>(13,583,777)</u>
Total net deficit	<u>\$ (2,076,101)</u>	<u>\$ (4,925,348)</u>

See accompanying notes to financial statements.

**HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
STATE OF HAWAII**

ENTERPRISE FUND

Statements of Revenues, Expenses, and Changes in Net Assets (Deficit)

Years ended June 30, 2011 and 2010

	<u>2011</u>	<u>2010</u>
Operating revenue		
Premium revenue-self insurance	\$ 243,323,819	\$ 253,295,079
Administrative fee (Note 2)	3,217,590	3,019,049
Administrative fee-Agency Fund (Note 2)	2,213,681	2,097,983
Increase in premium reserves - fully insured risk sharing plans	198,545	305,750
Total operating revenues	<u>248,953,635</u>	<u>258,717,861</u>
Operating expense		
Claims expense-self insurance (Note 6)	240,391,553	248,281,987
Change in incurred but not reported (IBNR) claims	657,100	(3,310,000)
Gain/loss on carrier payment methodology (Note 2)	28,314	101,005
Depreciation (Note 4)	1,547,140	914,118
Administrative operating expenses	4,627,726	4,334,911
Total operating expenses	<u>247,251,833</u>	<u>250,322,021</u>
Operating income	<u>1,701,802</u>	<u>8,395,840</u>
Nonoperating revenue (expense)		
Interest income and other, net of write up of investments held in State pool of \$743,937 in 2011 and \$1,806,133 in 2010. (Note 3)	1,147,445	2,150,063
Subsidy from Agency Fund (Note 7)	-	2,198,481
Total nonoperating revenues and expenses	<u>1,147,445</u>	<u>4,348,544</u>
INCREASE IN NET ASSETS	2,849,247	12,744,384
Total net deficit at beginning of year	<u>(4,925,348)</u>	<u>(17,669,732)</u>
Total net deficit at end of year	<u>\$ (2,076,101)</u>	<u>\$ (4,925,348)</u>

See accompanying notes to financial statements.

**HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
STATE OF HAWAII**

ENTERPRISE FUND

Statements of Cash Flows

Years ended June 30, 2011 and 2010

	2011	2010
Cash flows from operating activities:		
Cash paid to vendors	\$ (2,443,425)	\$ (3,043,867)
Cash paid to employees	(1,709,238)	(1,510,134)
Cash received from State of Hawaii, counties and individuals for premiums and benefit payments	241,282,381	253,145,274
Cash paid for premiums and benefit payments	(230,702,479)	(256,010,350)
Rebates received related to prescription drug plan	2,733,735	5,087,297
Reserves returned by insurance carriers	(228,880)	854,021
Net cash provided by (used in) operating activities	<u>8,932,094</u>	<u>(1,477,759)</u>
Cash flows from capital and related financing activities:		
Purchases of furniture, equipment and software development	(105,969)	(3,017,834)
Net cash used in capital and related financing activities	<u>(105,969)</u>	<u>(3,017,834)</u>
Cash flows from non-capital and related financing activities:		
Subsidy from Agency Fund	-	2,198,481
Net cash provided by non-capital and related financing activities	<u>-</u>	<u>2,198,481</u>
Cash flows from investing activities:		
Interest received	1,379,065	2,297,112
Net cash provided by investing activities	<u>1,379,065</u>	<u>2,297,112</u>
Net change in cash and cash equivalents	10,205,190	-
Cash and cash equivalents at beginning of year	-	-
Cash and cash equivalents at end of year	<u>\$ 10,205,190</u>	<u>\$ -</u>
Reconciliation of operating income to net cash provided by (used in) operating activities:		
Operating income	\$ 1,701,802	\$ 8,395,840
Adjustments to reconcile operating income to net cash (used) by operating activities:		
Depreciation	1,547,140	914,118
Increase in premiums receivable from State of Hawaii and counties	(8,046,537)	(4,221,661)
(Increase) decrease in other receivables held by insurance companies	(228,880)	854,021
Decrease in rebates receivable	847,102	1,234,302
Increase in prepaid expenses	(61,414)	(147,576)
Increase in deposits	-	(2,200,680)
Increase (decrease) in vouchers and contracts payable	211,696	(230,164)
Increase (decrease) in accrued wages and employee benefits payable	71,220	(25,663)
Increase (decrease) in amounts due to State of Hawaii	(174,715)	187,896
Increase in amounts due to employees	549,998	661,858
Increase (decrease) in retrospective premiums payable to carriers	2,000,385	(1,589,172)
Increase in premiums payable to carriers	7,202,118	2,164,162
Increase (decrease) in benefits claims payable	3,058,618	(7,659,353)
Increase in compensated absences	62,053	-
Increase in other postemployment benefits	191,508	184,313
Total adjustments	<u>7,230,292</u>	<u>(9,873,599)</u>
Net cash provided by (used in) operating activities	<u>\$ 8,932,094</u>	<u>\$ (1,477,759)</u>

See accompanying notes to financial statements.

**HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
STATE OF HAWAII**

AGENCY FUND
Statements of Fiduciary Assets and Liabilities
June 30, 2011 and 2010

	<u>2011</u>	<u>2010</u>
Assets		
Cash and cash equivalents (Note 3)	\$ 90,800,499	\$ 49,889,100
Cash received for pre-funding deposits (Note 3)	-	135,182,090
Cash and investments held by fiscal agent (Note 3)	169,272,987	-
Receivables		
Medicare reimbursements from individuals, net of allowance of \$491,146 in 2011 and \$403,332 in 2010	389,207	173,878
Premium receivable from State of Hawaii and counties	32,274,892	27,283,772
Other receivables held by insurance companies (Note 5)	42,721	24,584
Rebates receivable (Note 5)	5,063,909	3,385,529
Accrued interest receivable	35,684	230,790
Total receivables	37,806,413	31,098,553
Deposits (Note 6)	10,248,076	10,248,076
Total assets	<u>\$ 308,127,975</u>	<u>\$ 226,417,819</u>
Liabilities		
Due to State of Hawaii	\$ 62	\$ 62
Due to retirees	6,872	2,415
Retrospective premium payable (Note 5)	1,932,911	1,014,382
Premiums payable (Note 5)	7,921,812	5,716,500
Benefit claims payable (Note 6)	15,275,791	12,867,761
Amounts held on behalf of employers for benefits	282,990,527	206,816,699
Total liabilities	<u>\$ 308,127,975</u>	<u>\$ 226,417,819</u>

See accompanying notes to financial statements.

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
STATE OF HAWAII
Notes to Financial Statements
June 30, 2011 and 2010

(1) FINANCIAL REPORTING ENTITY

Chapter 87A of the Hawaii Revised Statutes (HRS) established the Hawaii Employer-Union Health Benefits Trust Fund (Trust Fund). The Trust Fund was established to design, provide and administer health and other benefit plans for State of Hawaii and County (Honolulu, Hawaii, Maui and Kauai) employees, retirees and their dependents beginning July 1, 2003. HRS Chapter 87 that established the Hawaii Public Employees Health Fund (Health Fund) was repealed and the net assets of the Health Fund were transferred to the Trust Fund.

Act 245, Session Laws of Hawaii 2005, established a voluntary employees' beneficiary association (VEBA) trust pilot program for the administration of the healthcare benefits for active employees and retirees, which the Hawaii State Teachers Association (HSTA) implemented in March 2006. The program sunset date was December 31, 2010, and the VEBA trust was terminated. Effective January 1, 2011, all HSTA employees and retirees receiving benefits under the VEBA trust were enrolled in the benefit programs administered through the Trust Fund. Approximately, 12,500 HSTA active employees and 2,500 retirees were transferred to the Trust Fund.

The Trust Fund is administratively attached to the Department of Budget and Finance in the executive branch of the State of Hawaii (State). The Trust Fund's basic financial statements reflect only its portion of the fund type categories. The State Comptroller maintains the central accounts for all State funds and publishes annual financial statements for the State, which includes the Trust Fund's financial activities.

The Trust Fund is administered by a Board of Trustees (Board) composed of ten trustees appointed by the Governor of the State. The Board is responsible for determining the nature and scope of benefit plans offered by the Trust Fund, negotiating and entering into contracts with insurance carriers, establishing eligibility and management policies for the Trust Fund, and overseeing all Trust Fund activities. The Board relies on professional services provided by a salaried Administrator, the State Attorney General and a benefit plan consultant.

The Trust Fund currently provides medical, prescription drug, dental, vision, chiropractic, dual-coverage medical and prescription and group life insurance benefits. The medical plans include a statewide preferred provider organization benefit plan and a federally-qualified HMO plan. Other benefit plans are offered on a statewide basis.

The employers' share of benefit plan contributions for collectively bargained employees are negotiated by the State and Counties with the exclusive representative of each employee bargaining unit. Employer contributions for all other employees not covered by collective bargaining contracts and for retirees are prescribed by the HRS. Any remaining premium balance is paid by employees through payroll deductions or Premium Conversion Plan reductions.

State and County contributions also include the employees' share made through payroll deductions, contributions for retired employees, and Medicare reimbursements made by the Trust Fund to eligible retired employees and their spouses for Medicare Part B insurance premiums withheld from their social security benefits.

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND

STATE OF HAWAII

Notes to Financial Statements

June 30, 2011 and 2010

The Trust Fund provided insurance coverage to approximately the following individuals as of June 30, 2011 and 2010:

	<u>2011</u>	<u>2010</u>
Active employees	66,350	53,900
Retirees	41,704	39,285
Dependents	<u>77,384</u>	<u>77,840</u>
Total	<u>185,438</u>	<u>171,025</u>

(2) SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Measurement Focus, Basis of Accounting, and Financial Statement Presentation

Proprietary Fund (Enterprise Fund) - The accounting for the active employee healthcare benefits is reported as an enterprise fund. An enterprise fund is used to account for the acquisition, operation and maintenance of government facilities and services that are entirely or predominantly supported by user charges. The enterprise fund operations are reported using the economic resources measurement focus and the accrual basis of accounting. Under this method, revenues are recorded when earned and expenses are recorded at the time liabilities are incurred, regardless of the timing of cash flows.

The enterprise fund statements apply all effective pronouncements of the Governmental Accounting Standards Board (GASB). In addition, these statements apply all Accounting Research Bulletins (ARBs) of the Committee on Accounting Procedures, Accounting Principles Board Opinions (APBO) and Financial Accounting Standards Board (FASB) Statements and Interpretations issued on or before November 30, 1989, except those that conflict with GASB pronouncements. The Trust Fund has elected not to apply the FASB pronouncements on accounting and financial reporting that were issued after November 30, 1989.

The enterprise fund distinguishes operating revenues and expenses from nonoperating items. Operating revenues and expenses generally result from providing services or goods in connection with the enterprise fund's ongoing operations. Revenues and expenses not meeting this definition are reported as nonoperating revenues and expenses. The principal operating revenues of the Trust Fund are premium contributions and administrative fees. Interest income from investments is reported as nonoperating income.

Fiduciary Fund (Agency Fund) - The Trust Fund reports assets and liabilities in an agency fund resulting from the collection of contributions from employers and retirees and payments of postemployment health benefits for retirees and their beneficiaries.

The Trust Fund follows GASB Statement No. 43, *Financial Reporting for Postemployment Benefit Plans Other than Pensions* (GASB 43). GASB 43 establishes accounting and financial reporting standards for plans that provide other postemployment benefits (OPEB) other than pensions. GASB 43 requires organizations to report a statement of fiduciary assets and liabilities – agency fund for multiple-employer OPEB plans that are not administered as trusts or equivalent arrangements. For fiscal years 2011 and 2010, the Trust Fund does not meet the criteria of a trust or equivalent arrangement for the purposed of GASB 43, thus assets and liabilities for the postemployment health benefits are reported as an agency fund.

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
STATE OF HAWAII
Notes to Financial Statements
June 30, 2011 and 2010

The agency fund is reported using the same basis of accounting as the enterprise fund. The agency fund is reported using the accrual basis of accounting. The agency fund reports no plan net assets and the assets accumulated in excess of liabilities are reported as a liability for amounts held on behalf of employers for postemployment health benefits.

Financial Statement Presentation - The reporting of active and postemployment (including their respective beneficiaries) healthcare benefits provided through the same plan should separate the two benefits for accounting purposes between active and postemployment healthcare benefits. Accordingly, the Trust Fund reports the postemployment healthcare benefits in conformity with GASB 43 and the active employee healthcare benefits as risk financing in conformity with GASB Statement No. 10, *Accounting and Financial Reporting for Risk Financing and Related Insurance Issues* (GASB 10), as amended. The Trust Fund administers postemployment healthcare benefits under an agent multiple-employer defined benefit plan as defined by GASB 43.

In fiscal years 2011 and 2010, the accounting for the active employee healthcare benefits are reported under the statements of net assets (deficit) – enterprise fund, statements of revenue, expenses and changes in net deficit – enterprise fund and statements of cash flows – enterprise fund. The accounting for the postemployment healthcare benefits are reported in the statements of fiduciary assets and liabilities – agency fund. For financial reporting purposes, certain assets, liabilities, revenues and inflows and expenses and outflows have been allocated for the separate accounting of active employees and postemployment healthcare benefits.

Capital Assets

The Trust Fund's capital assets consist of furniture, equipment and software with estimated useful lives greater than one year and with an acquisition cost greater than \$5,000. Purchased capital assets are valued at cost. Donated capital assets are recorded at their fair value at the date of donation. Depreciation expense is determined using the straight-line method over the assets' useful life of seven years.

Cash and Cash Equivalents

Cash and cash equivalents represent amounts held in and by the State Treasury. The Trust Fund invests funds in the State Treasury cash and investment pool (State Pool) as well as directs the State Treasurer to invest in specific investments outside of the State Pool. Investments are reported in the accompanying statement of net assets (deficit) and statement of fiduciary assets and liabilities at fair value. Changes in fair value that occur during a fiscal year are recognized as interest income in the statement of revenues, expenses and changes in net deficit and as a change in amounts held on behalf of employers for benefits in the statement of fiduciary assets and liabilities reported for that fiscal year.

For the purposes of the accompanying statement of cash flows, the enterprise fund considers all highly liquid investments with maturities of three months or less when purchased, and their equity in the State Pool to be cash equivalents.

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
STATE OF HAWAII
Notes to Financial Statements
June 30, 2011 and 2010

Compensated Absences

All employees earn vacation at the rate of one and three-quarters working days for each month of service. Vacation days may be accumulated to a maximum of 90 days. Employees are entitled to receive cash payment for accumulated vacation upon termination. The accompanying financial statements present the cost of accumulated unpaid vacation as a liability. A reconciliation of changes in compensated absence liabilities for accumulated vacation is as follows for the years ended June 30, 2011 and 2010:

	2011	2010
Balance at beginning of year	\$ 172,657	\$ 186,110
Additions	107,390	88,627
Reductions	<u>(45,337)</u>	<u>(102,080)</u>
Balance at end of year	<u>234,710</u>	<u>172,657</u>
Less current portion	<u>(68,164)</u>	<u>(35,767)</u>
	<u>\$ 166,546</u>	<u>\$ 136,890</u>

All employees earn sick leave credits at the rate of one and three-quarters working days for each month of service. Sick leave credits may be accumulated without limit. Sick leave can be taken only in the event of illness and is not convertible to pay upon termination of employment. Accordingly, no liability for unpaid sick leave credits is reported in the accompanying financial statements. However, a Trust Fund employee who retires or leaves government service in good standing with sixty days or more of unused sick leave is entitled to additional service credit in the Employees' Retirement System of the State of Hawaii. Accumulated sick leave as of June 30, 2011 and 2010, relating to the Trust Fund approximated \$528,447 and \$384,855.

Receivables

Receivables consist primarily of amounts due from employers and employees for health benefits premium contributions, as well as amounts due from individuals for Medicare Part B reimbursements. The employee receivables are reported as net receivables and were based on management's estimate of amounts considered collectible. Management considered receivables outstanding for more than 60 days by employees who are no longer employed by State or Counties to be uncollectible. An allowance for employer receivables is not considered necessary based on past collection experience. The Medicare reimbursement receivables from individuals are reported as net receivables and were based on management's estimate of amounts considered collectible. Management considered receivables from individuals who are deceased and do not have a surviving spouse enrolled in Medicare Part B to be uncollectible.

Risk Management

The Trust Fund is exposed to various risks of loss related to torts; theft of, damage to, or destruction of assets; errors or omissions; natural disasters; and injuries to employees. A liability for a claim for a risk of loss is established if information indicates that it is probable that a liability has been incurred as of the date of the financial statements and the amount of the loss is reasonably estimable.

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Benefits Claims Expense and Cost

The benefits claims expense reported in the enterprise fund relates to the self-funded medical and prescription drug plans and includes the ultimate net cost of all reported claims incurred through the end of the fiscal year, for active employee healthcare benefits. The benefits claims expense also includes an additional estimate for unreported claims that have been incurred as of fiscal year-end. The cost of benefits claims for retirees, which also include provisions for unreported claims, are reported as a component of benefit claims payable in the agency fund.

Management has made certain assumptions based on currently available information and industry statistics in determining the benefits claims expense. Accordingly, the ultimate costs may vary significantly from the estimated amounts reported in the financial statements. Management believes that, given the inherent variability in benefits claims expense, such aggregate liabilities are within a reasonable range of adequacy. Such estimates are based on estimated claims cost reported prior to fiscal year-end, and estimates (based on actuarial projections of historical loss development) of claims cost incurred but not reported. Reserves are continually reviewed and adjusted as experience develops or new information becomes known; such adjustments are charged to net assets as incurred for active employees. Rebates receivable are recorded in the period that the claim is paid and is netted against the cost of the claim.

Management recorded its best estimate for the obligation of unpaid claims of \$41,392,678 and \$38,334,060 for active employees and \$ 15,275,791 and \$12,867,761 for retirees as of June 30, 2011 and 2010, respectively, based on the Trust Fund's consulting actuary's estimate for the liability for unpaid claims. These amounts include administrative fees payable to the contracted plan administrator for services provided and benefit claims incurred as of June 30, 2011 and 2010.

Carrier Payment Methodology

Premiums paid to the carriers are calculated on a monthly basis by multiplying the total number of active employees and retirees enrolled in the various plans on the last day of the month by the premium rates set forth in the contract agreements, whereas employer and employee billings are calculated on a semi-monthly basis. As a result, the Trust Fund recognizes a gain or loss between the total premiums actually collected from the employers and employees and the total premiums actually paid to the carriers. For the years ended June 30, 2011 and 2010, respectively, the Trust Fund recognized losses of approximately \$28,314 and \$101,005 and \$25,110 and \$89,570, related to active employees and retirees, respectively.

HRS Section 87A states that the Trust Fund employer contributions are irrevocable. In addition, HRS Section 87A does not require the Trust Fund to return insurance carrier refunds, rate credits and other earnings, as authorized by the Board, to identifiable employees who participated in ascertainable years that created the refund or credit. Accordingly, the Trust Fund recognizes the gains as increases in gain/loss on carrier payment methodology and related receivable as other receivables held by insurance companies.

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Administrative Fees

The Trust Fund assesses and collects administrative fees from employers to support the activities of the Trust Fund. The administrative fees are assessed each pay period and vary depending upon the type of bargaining agreements. For the years ended June 30, 2011 and 2010, respectively, the administrative fees charged to participating agencies to administer the plans was \$3,217,590 and \$3,019,049 and \$2,213,681 and \$2,097,983 for active employees and retirees, respectively. These amounts are recognized as revenues in the enterprise fund, as all administrative expenses are recognized in the enterprise fund.

Estimates

In preparing financial statements in conformity with accounting principles generally accepted in the United States of America, management is required to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Reclassifications

Certain reclassifications have been made to the 2010 financial statement in order to conform to the current year presentation.

(3) CASH AND INVESTMENTS

As of June 30, 2011 and 2010, the Trust Fund's cash and investments were distributed and reported in the financial statements as follows:

		2011		
		Enterprise Fund	Agency Fund	Total
Cash and cash equivalents:				
Cash	\$ -	\$ 18,636,214	\$ 18,636,214	
Equity in the State Pool	10,205,190	90,800,499	101,005,689	
Mutual funds	-	150,636,773	150,636,773	
Total	\$ 10,205,190	\$ 260,073,486	\$ 270,278,676	
		2010		
		Enterprise Fund	Agency Fund	Total
Cash and cash equivalents:				
Certificates of deposit	\$ -	\$ 55,552,264	\$ 55,552,264	
Equity in the State Pool	-	51,889,100	51,889,100	
Repurchase agreements	-	77,629,826	77,629,826	
Total	\$ -	\$ 185,071,190	\$ 185,071,190	

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Trust Fund Investment Pool

The Trust Fund invests funds received from employers to fund future OPEB benefits as they become due. The Board is responsible for safekeeping these monies and has appointed an Investment Committee responsible for investing Trust Fund assets in compliance with applicable HRS and with the foremost intention of providing sufficient investment appreciation to meet the current and future OPEB benefit payments. Cash is pooled with funds from employers and is invested in accordance with the Trust Fund's Statement of Investment Policy and Guidelines (Investment Policy).

Investments Authorized - Section 87A-24(2) of the HRS empowers the Board to invest monies "in the same manner specified in section 88-119(1)(A), (1)(B), (1)(C), (2), (3), (4), (5), (6), and (7)." Permissible investments under section 88-119 "Investments" are as follows:

- (1) Real estate loans and mortgages. Obligations (as defined in section 431:6-101) of any of the following classes:
 - (a) Obligations secured by mortgages of nonprofit corporations desiring to build multi-rental units (ten units or more) subject to control of the government for occupancy by families displaced as a result of government action;
 - (b) Obligations secured by mortgages insured by the Federal Housing Administration;
 - (c) Obligations for the repayment of home loans made under the Servicemen's Readjustment Act of 1944 or under Title II of the National Housing Act;
- (2) Government obligations, etc. Obligations of any of the following classes:
 - (a) Obligations issued or guaranteed as to principal and interest by the United States or by any state thereof or by any municipal or political subdivision or school district of any of the foregoing; provided that principal of and interest on the obligations are payable in currency of the United States; or sovereign debt instruments issued by agencies of, or guaranteed by foreign governments;
 - (b) Revenue bonds, whether or not permitted by any other provision hereof, of the State or any municipal or political subdivision thereof, including the board of water supply of the city and county of Honolulu, and street or improvement district bonds of any district or project in the State; and
 - (c) Obligations issued or guaranteed by any Federal Home Loan Bank, including consolidated Federal Home Loan bank obligations, the Home Owner's Loan Corporation, the Federal National Mortgage Association, or the Small Business Administration;
- (3) Corporate obligations. Below investment grade or nonrated debt instruments, foreign or domestic, in accordance with investment guidelines adopted by the board;
- (4) Preferred and common stocks. Shares of preferred or common stock of any corporation created or existing under the laws of the United States or of any state or district thereof or of any country;
- (5) Obligations eligible by law for purchase in the open market by federal reserve banks;
- (6) Obligations issued or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, or the African Development Bank;
- (7) Obligations secured by collateral consisting of any of the securities or stock listed above and worth at the time the investment is made at least fifteen per cent more than the amount of the respective obligations;

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Asset Allocation - Asset allocation refers to the strategic deployment of assets among the major classes of investments permitted under the HRS. It is the primary determinant of success in meeting long-term investment objectives. The Trust Fund's asset allocation is established by the Board with input from the Investment Committee and the Investment Consultant and is a function of the Board's expectations of current and future liquidity and income needs, eligible investments types under the HRS, expectations of asset class investment performance likely to be achieved over the long-term, and the Board's tolerance for investment risk. The selected asset allocation for the Trust Fund's two asset pools is as follows:

<u>Asset Classification</u>	<u>Target</u>	<u>Minimum</u>	<u>Maximum</u>
Short-term Liquidity/Operating Asset Pool			
Cash and equivalents and short-duration fixed income	100%	0%	100%
Long-term Investment Portfolio			
Cash and cash equivalents	0%	0%	100%
U.S. Fixed Income	35%	30%	40%
Inflation Linked Securities	15%	10%	20%
U.S. Real Estate Securities	10%	5%	15%
U.S. Equities	25%	20%	30%
International Equities	15%	10%	20%

Rebalancing - The Board has a policy of rebalancing the Portfolio when actual asset allocations fall outside of the desired ranges. In order to minimize transaction costs and operational risks, Trust Fund cash flows, such as contributions received or benefits paid, will be used to achieve rebalancing objectives. Moreover, the Investment Consultant will provide in its quarterly report the percentages that each asset class constitutes of total assets. If the percentage falls outside of the allowable target asset allocation ranges in the quarterly measurement, the Board or Investment Committee generally will provide direction to rebalance the Portfolio to target allocation. These customary rebalancing procedures notwithstanding, during periods of extreme market conditions, illiquid markets, or other extenuating circumstances in which rebalancing may be difficult or costly, the Board/Investment Committee may, at its discretion, elect to suspend rebalancing until a time it believes is prudent.

Interest Rate Risk – Interest rate risk is the risk that changes in the market rates will adversely affect the fair value of an investment. Generally, the longer the maturity of an investment, the greater the sensitivity of its fair value to changes in market interest rates. The Trust Fund does not have a policy to manage interest rate risk. As of June 30, 2011 and 2010, the Trust Fund had monies invested short-term in the State Pool, mutual funds, negotiable certificates of deposit and repurchase agreements all with original maturities of less than three months.

Credit Risk – Generally, credit risk is the risk that an issuer of an investment will not fulfill its obligation to the holder of the investment. This is measured by the assignment of a rating by a nationally recognized statistical rating organization. As a means to manage credit risk, the Trust Fund's policy requires individual securities to be rated investment-grade (Baa3/BBB- or higher) by at least two of the three rating agencies (Moody's, S&P and/or Fitch) and for mutual funds to have an average rating above investment grade. As of June 30, 2011 the Trust Fund was invested in two fixed-income oriented mutual funds, the Vanguard Total Bond Market Index Fund, which only invests in investment grade securities, and the BlackRock Inflation Protection Fund. Mutual Funds are not rated by nationally recognized statistical rating organizations. However, based on

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each fund's underlying holdings, at June 30, 2011, the Vanguard Total Bond Market Index Fund and the BlackRock Inflation Protection Fund had average credit quality ratings of AAA/AA and AAA, respectively. At June 30, 2010, the repurchase agreements were not rated by a nationally recognized statistical rating organization.

Custodial Credit Risk – For an investment, custodial credit is the risk that, in the event of the failure of the counterparty, the Trust Fund will not be able to recover the value of its investments residing at its custodian bank or collateral securities that are lent by the custodian bank to outside party(ies). The Trust Fund's investments are held at custodian banks of pooled funds, or at the Trust Fund's own custodian bank. The Trust Fund's custodian is Bank of Hawaii (BOH) and investments are held with BOH's sub-custodian Bank of New York Mellon (BNY Mellon). BOH and BNY Mellon are "Qualified Custodians" as defined within Rule 206(4)-2 of the Investment Advisers Act of 1940 for which funds or securities are held separate from bank assets. The Trust Fund did not have custodial credit risk related to its mutual funds.

Custodial credit risk for deposits is the risk that, in the event of the failure of a depository financial institution, the Trust Fund will not be able to recover its deposits or will not be able to recover collateral securities that are in the possession of an outside party. The Trust Fund's Investment Policy or the HRS' do not contain legal or policy requirements that would limit the exposure to custodial credit risk for deposits. At June 30, 2011, the Trust Fund had cash deposits of \$18,386,214 that are in excess of the Federal Deposit Insurance Corporation limits. However, deposits are held short-term (less than one month) until monies can be invested with the fiscal agent.

Concentration of Credit Risk – The Trust Fund provides guidelines regarding portfolio diversification by placing limits on the amount the Trust Fund may invest in any one issuer, types of investment instruments, and position limits per issue of an investment instrument. At June 30, 2011 and 2010, the Trust Fund's investment concentration was as follows:

<u>Investment Type/Issuer</u>	<u>Investment Type - Percentage of Portfolio</u>	<u>One Issuer of Investment Instrument - Percentage of Portfolio</u>
2011:		
Mutual Funds	56%	
Vanguard		48%
BlackRock		8%
2010:		
Repurchase agreements	60%	
Bank of Hawaii		47%
First Hawaiian Bank		13%

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State Treasury Cash and Investment Pool

The State Director of Finance is responsible for the safekeeping of all monies paid into the State Treasury (cash pool). The Director of Finance may invest any monies of the State, which in the Director's judgment are in excess of the amounts necessary for meeting the immediate requirements of the State. Cash is pooled with funds from other State agencies and departments and is invested in accordance with the State Investment Policy. Cash accounts that participate in the State Pool accrue interest based on the weighted average cash balances of each account. The weighted average maturity of the cash pool at June 30, 2011 and 2010, respectively, was 201 and 154 days.

Investments Authorized by the State's Investment Policy – Legally authorized investments include obligations of or guaranteed by the U.S. government, obligations of the State, federally-insured savings and checking accounts, time certificates of deposit, student loan resource securities (including auction rate securities, asset backed securities, program revenue notes and bonds, securities issued pursuant to Rule 144A of the Securities Act of 1933), money market funds, repurchase agreements with federally-insured financial institutions, commercial paper and banker's acceptances.

Credit Risk – Generally, credit risk is the risk that an issuer of an investment will not fulfill its obligation to the holder of the investment. This is measured by the assignment of a rating by a nationally recognized statistical rating organization. The State's Investment Policy limits investments in state and U.S. Treasury securities, time certificates of deposit, U.S. government or agency obligations, repurchase agreements, commercial paper, bankers' acceptance, and money market funds and student loan resources securities maintaining a rating of AAA. As of June 30, 2011 and 2010, the State Pool has not been rated by a nationally recognized statistical rating organization.

The State Pool as of June 30, 2011 and 2010, included auction rate securities collateralized by student loans. During 2008, a number of these auctions failed and companies without the ability to hold such securities until maturity have taken significant losses. During the years ended June 30, 2011 and 2010, the State experienced a favorable change in the fair value of its investments in the auction rate securities due to improved market conditions, and recorded an increase in fair value. The Trust Fund's allocated share of the increase was \$1,260,910 and \$3,010,221 for the years ended June 30, 2011 and 2010, respectively, of which \$743,937 and \$1,806,133 and \$516,973 and \$1,204,088 was allocated to the enterprise fund and agency fund, respectively, resulting in a total cumulative decrease of \$230,845 and \$1,491,756 as of June 30, 2011 and 2010, respectively. These adjustments were recorded as an increase of cash and cash equivalents and interest income and other in the enterprise fund and cash and cash equivalents and amounts held on behalf of employers for benefits in the agency fund.

Additional information on the investment risks (interest rate risk, custodial credit risk, and concentration of credit risk) related to the State Pool are included in the State Comprehensive Annual Financial Report, which can be obtained from the State's Department of Accounting and General Services.

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(4) CAPITAL ASSETS

The enterprise fund capital asset activity for the years ended June 30, 2011 and 2010, was as follows:

	<u>Balance at July 1, 2010</u>	<u>Increases</u>	<u>Decreases</u>	<u>Balances at June 30, 2011</u>
Capital assets being depreciated				
Office furniture and equipment	\$ 4,268,938	\$ -	\$ -	\$ 4,268,938
Computer equipment and software	9,369,750	105,969	-	9,475,719
Less accumulated depreciation	<u>(4,980,259)</u>	<u>(1,547,140)</u>	<u>-</u>	<u>(6,527,399)</u>
Capital assets, net	<u>\$ 8,658,429</u>	<u>\$ (1,441,171)</u>	<u>\$ -</u>	<u>\$ 7,217,258</u>

	<u>Balance at July 1, 2009</u>	<u>Increases</u>	<u>Decreases</u>	<u>Balances at June 30, 2010</u>
Capital assets, not being depreciated				
Software development in progress	\$ 6,366,074	\$ 1,578,309	\$ (7,944,383)	\$ -
Capital assets being depreciated				
Office furniture and equipment	4,254,783	14,155	-	4,268,938
Computer equipment and software	-	9,369,750	-	9,369,750
Less accumulated depreciation	<u>(4,066,141)</u>	<u>(914,118)</u>	<u>-</u>	<u>(4,980,259)</u>
Total capital assets, being depreciated net	<u>188,642</u>	<u>8,469,787</u>	<u>-</u>	<u>8,658,429</u>
Capital assets, net	<u>\$ 6,554,716</u>	<u>\$ 10,048,096</u>	<u>\$ (7,944,383)</u>	<u>\$ 8,658,429</u>

As of June 30, 2010, capital asset balances previously recorded in the agency fund were reclassified to the enterprise fund. The Trust Fund has developed an expense allocation to recover a portion of depreciation expense from the agency fund for use of the capital assets in administering the agency fund. Approximately 41% of the depreciation expense for fiscal years 2011 and 2010, was recovered from the agency fund as part of the administrative fee charged to the agency fund.

(5) HEALTH AND LIFE INSURANCE BENEFIT CONTRACTS

The Trust Fund's primary purpose is to provide employee-beneficiaries, retiree-beneficiaries and dependent-beneficiaries with a health benefits plan and group life insurance. To effectuate that purpose, the Trust Fund requested proposals in August 2006 and awarded multi-year health and life insurance benefit contracts commencing July 1, 2007 and continuing through June 30, 2009 and subsequently exercised its option to extend contracts for an additional two year period through June 30, 2011.

Individual carriers / administrators are addressed below. The plans were offered with 3 different financial arrangements:

- Self funding: The medical PPOs with Health Management Associates (HMA) and Hawaii Medical Service Association (HMSA) acting as third party administrators (TPA), medical health maintenance organization (HMO), high deductible health plan (HDHP) and supplemental with HMSA, and the prescription drug coverage with NMHC (now informedRx) as administrator are all self funded plans. Rates are experience rated and are set by the Trust Fund Board acting on the advice of the consultant/actuary. Due to the size of the pool there is no stop loss insurance associated with these plans. The Trust Fund pays administrative fees to the TPAs and pays actual claim costs as claims are paid.

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If claims are less than the amount projected and included in the premium collection from employers and employee-beneficiaries, surplus funds remain in the Trust Fund. In addition, prescription drug rebates are received from informedRx 6 to 9 months after they are realized.

- Fully insured: The Kaiser Basic and Comprehensive HMO plans and the Royal State Chiropractic Plan are all fully insured. Premiums are received from employers and paid to the carriers. There is no additional risk to the Trust Fund or funds to be paid to the Trust Fund. Rates are set by Kaiser and Royal State. Effective January 1, 2011, the Trust Fund created new plans for the HSTA VEBA active employees and retirees. HMSA medical and prescription drug, Kaiser Comprehensive HMO, Royal State Chiropractic Plan, HDS Dental, VSP vision, and Standard Life Insurance are all fully insured.
- Fully insured with Retrospective Risk Sharing and Risk Sharing: The Hawaii Dental Service (HDS) and Vision Services Plan (VSP) plans are funded through a fully insured retrospective risk sharing arrangement. Rates are set by HDS and VSP using the plans' experience. Full premium is collected from employers and 95% (HDS & VSP) is paid to the carriers. At the end of the year, if claims and retention exceed the reduced premium paid, the Trust Fund will pay the carriers the amount of the excess up to the withheld five percent (5%). The annual accounting for active employees and retirees is maintained separately. As such, the premium surplus of one group cannot be used to offset the underwriting loss of another group. Upon expiration or termination of the contract, any premium surplus will be refunded to the Trust Fund and any underwriting losses will not be paid by the Trust Fund. The Royal State Dual Coverage Supplemental Plan is funded through a fully insured risk sharing arrangement and is similar to the HDS and VSP plans except there are no retrospective premiums.

Health Maintenance Organization – Closed Panel HMO

The Trust Fund entered into a contract with Kaiser Foundation Health Plan, Inc. (Kaiser) to provide active employees and retirees with HMO benefits for the period July 1, 2007 through June 30, 2009 and subsequently exercised its option to extend the contracts for an additional two years through June 30, 2011. The HMO is not a participating contract. Accordingly, there is no premium surplus or underwriting loss.

The Trust Fund entered into a contract with Kaiser to provide HSTA VEBA active employees and retirees with HMO benefits for the period January 1, 2011 through June 30, 2011. The HMO is under the same financial arrangement. Accordingly, there is no premium surplus or underwriting loss.

Medical and Prescription Drug Benefits

The Trust Fund entered into a contract with the HMSA and HMA to provide claims administration services for active employees and retirees for medical plans for the period July 1, 2007 through June 30, 2009, and subsequently exercised its option to extend the contract for an additional two years through June 30, 2011. The plans include a 90/10 PPO with HMA and a 90/10 PPO (July 1, 2009 through January 31, 2010), 80/20 PPO (effective February 1, 2010), HMO, HDHP and Supplemental Plan with HMSA. The amounts paid for claims and administrative services to HMSA and HMA are reconciled with the payments made by HMSA and HMA and any remaining surplus or deficit will be remitted to or owed by the Trust Fund. As

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of June 30, 2011 and 2010, respectively, amounts held by HMSA were \$260,576 and \$28,859 for active employees and \$42,721 and \$24,584 for retirees.

The Trust Fund entered into a contract with HMSA to provide HSTA VEBA active employees and retirees with medical and prescription drug benefits for the period January 1, 2011 through June 30, 2011. The plans included a 90/10 and 80/20 PPO and Supplemental for actives and a 90/10 PPO for retirees. The plans are fully insured and therefore, there is no premium surplus or underwriting loss.

The Trust Fund entered into a contract with informedRx for the period July 1, 2007, through June 30, 2009, and subsequently exercised its option to extend the contract for an additional year through June 30, 2010. The contract was extended again for an additional year through June 30, 2011. The Trust Fund's contract with informedRx entitles the Trust Fund to rebates from pharmaceutical manufacturers related to claims paid by the Trust Fund and processed by informedRx. As of June 30, 2011 and 2010, respectively, rebates receivable from informedRx were \$884,153 and \$1,658,814 for active employees and \$5,063,909 and \$3,385,529 for retirees.

Vision Care Benefits

The Trust Fund entered into a contract with VSP for the period July 1, 2007 through June 30, 2009 and subsequently exercised its option to extend the contract for an additional two years through June 30, 2011. The contracts include a five percent (5%) retrospective premium agreement for both active employees and retirees. Under these agreements, the Trust Fund will pay VSP ninety-five percent (95%) of the premiums due each month.

The Trust Fund entered into a contract with VSP to provide HSTA VEBA active employees and retirees with vision benefits for the period January 1, 2011 through June 30, 2011. The contract included a five percent (5%) retrospective premium agreement for both active employees and retirees.

At the end of the plan year, if claims and retention exceed 95% of the premiums due for the plan year, the Trust Fund will pay VSP the amount of the excess up to the withheld 5%. Since VSP is still allowed to receive the retrospective premium if they experience losses for the plan year based on the final accounting, a payable to VSP was recorded. At June 30, 2011 and 2010, respectively, the Trust Fund's retrospective premium payable was \$529,225 and \$254,142 and \$313,479 and \$148,338 for active employees and retirees, respectively.

Dental Benefits

The Trust Fund entered into a contract with HDS for the period July 1, 2007, through June 30, 2009, and subsequently exercised its option to extend the contract for an additional two years through June 30, 2011. The contracts include a five percent (5%) retrospective premium agreement for both active employees and retirees. Under these agreements, the Trust Fund will pay HDS ninety-five percent (95%) of the premiums due each month.

The Trust Fund entered into a contract with HDS to provide HSTA VEBA active employees and retirees primary dental benefits and for active employees' supplemental dental benefits for the period January 1, 2011 through June 30, 2011. There was no retrospective premium agreement for the HSTA VEBA contract.

At the end of the plan year, if claims and retention exceed 95% of the premiums due for the plan

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year, the Trust Fund will pay HDS the amount of the excess up to the withheld five percent (5%). Since HDS is still allowed to receive the retrospective premium if they experience losses for the plan year based on the final accounting, a payable to HDS was recorded. At June 30, 2011 and 2010, respectively, the Trust Fund's retrospective premium payable was \$1,725,411 and \$0 and \$1,619,432 and \$866,044 for active employees and retirees, respectively.

Life Insurance Benefits

The Trust Fund entered into a contract with Standard Insurance Company (Standard) to provide term life insurance benefits to all eligible active employees and retirees for the period July 1, 2007 through June 30, 2009 and subsequently exercised its option to extend the contract for an additional year through June 30, 2010. The contract was extended again for an additional year through June 30, 2011. The amounts paid for claims and administrative services are reconciled with the payments made to Standard and any remaining surplus will be refunded to the Trust Fund and any underwriting losses will not be paid by the Trust Fund.

The Trust Fund entered into a contract with Standard to provide HSTA VEBA active employees' and retirees' life insurance benefits for the period January 1, 2011 through June 30, 2011.

Dual-Coverage Medical and Prescription Drug Benefits

The Trust Fund entered into a contract with Royal State National Insurance Company, Ltd. (RSN) to provide active employees with dual-coverage medical and prescription drug benefits for the period July 1, 2007 through June 30, 2009 and subsequently exercised its option to extend the contract for an additional two years through June 30, 2011. The amounts paid for claims and administrative services are reconciled with the payments made to RSN and any remaining surplus will be refunded to the Trust Fund and any underwriting losses will not be paid by the Trust Fund. As of June 30, 2011 and 2010, respectively, amounts held by RSN were \$0 and \$2,837 for active employees and \$0 for retirees.

Chiropractic Plan

The Trust Fund entered into a contract with RSN to provide active employees with chiropractic benefits for the period July 1, 2007 through June 30, 2009 and subsequently exercised its option to extend the contract for an additional two years through June 30, 2011. The Chiropractic plan is not a participating contract. Accordingly, there is no premium surplus or underwriting loss.

The Trust Fund entered into a contract with RSN to provide HSTA VEBA active employees with chiropractic benefits for the period January 1, 2011 through June 30, 2011.

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All Contracts

The following is a summary of the of premium reserves held by insurance companies, rebates receivable, retrospective premiums payable, and premiums payable balances by insurance company at June 30, 2011 and 2010:

	2011	
	Active Employees	Retirees
Other receivables held by insurance companies		
HMSA	\$ 260,576	\$ 42,721
Rebates receivable		
Receivable from informedRx	\$ 884,153	\$ 5,063,909
Receivable from HMSA	24,712	-
	<u>\$ 908,865</u>	<u>\$ 5,063,909</u>
Retrospective premiums payable		
HDS - dental contract	1,725,411	1,619,432
VSP - vision contract	529,115	313,479
	<u>\$ 2,254,526</u>	<u>\$ 1,932,911</u>
Premiums payable		
HDS	\$ 2,568,385	\$ 1,790,048
HDS - HSTA	672,049	117,576
Kaiser Hawaii	6,274,043	3,681,120
Kaiser Hawaii - HSTA	1,324,511	169,425
RSN Dual/Chiro	123,375	-
RSN Chiro - HSTA	27,450	-
VSP	573,629	356,170
VSP - HSTA	91,875	18,176
Standard	220,176	141,523
Standard - HSTA	50,149	10,535
COBRA payable - HDS	376	-
COBRA payable - Royal	707	-
COBRA payable - Kaiser	2,780	-
COBRA payable - VSP	2,021	-
HMSA - HSTA	5,297,282	1,637,239
	<u>\$ 17,228,808</u>	<u>\$ 7,921,812</u>

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	2010	
	Active	
	Employees	Retirees
Other receivables held by insurance companies		
RSN	\$ 2,837	\$ -
HMSA	28,859	24,584
	<u>\$ 31,696</u>	<u>\$ 24,584</u>
Rebates receivable		
Receivable from informedRx	\$ 1,658,814	\$ 3,385,529
Receivable from HMSA	97,153	-
	<u>\$ 1,755,967</u>	<u>\$ 3,385,529</u>
Retrospective premiums payable		
HDS - dental contract	\$ -	\$ 866,044
VSP - vision contract	254,142	148,338
	<u>\$ 254,142</u>	<u>\$ 1,014,382</u>
Premiums payable		
HDS	\$ 4,198,739	\$ 1,959,347
Kaiser Hawaii	5,077,699	3,091,172
ROYAL DUAL	137,737	-
VSP	398,082	529,930
Standard	221,977	136,051
COBRA payable · HDS	9,783	-
COBRA payable · Royal	37	-
COBRA payable · Kaiser	2,431	-
COBRA payable · HMA	(19,795)	-
	<u>\$ 10,026,690</u>	<u>\$ 5,716,500</u>

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(6) BENEFIT CLAIMS EXPENSE

Beginning July 1, 2007, the Trust Fund offered self-funded medical and prescription drug plans, administered by Hawaii Medical Service Association (HMSA), Health Management Associates (HMA), and National Medical Health Card Systems (NMHCS) (now informedRx) under contracts for the period July 1, 2007 through June 30, 2009, which were subsequently extended through June 30, 2011. Under the self-funded arrangements, the contract administrators provide the Trust Fund provider networks, claims processing, cost containment and other services. Instead of premiums, the Trust Fund pays administrative fees to the contractor for the services rendered and reimburses the contractor for claims paid. Activity in the liability for unpaid benefit claims expense related to the self-funded medical and prescription drug plans is as follows for the years ended June 30, 2011, 2010 and 2009:

	Active employees	Retirees	Total
Balance at July 1, 2008	\$ 36,951,791	\$ 9,215,230	\$ 46,167,021
Current year claims and changes in estimates	258,521,518	173,267,524	431,789,042
Contractor processing administrative fees related to current year	13,427,564	14,004,110	27,431,674
Paid during current year	<u>(262,907,460)</u>	<u>(182,168,597)</u>	<u>(445,076,057)</u>
Balance at June 30, 2009	<u>\$ 45,993,413</u>	<u>\$ 14,318,267</u>	<u>\$ 60,311,680</u>
Balance at July 1, 2009	\$ 45,993,413	\$ 14,318,267	\$ 60,311,680
Current year claims and changes in estimates	236,864,948	161,907,925	398,772,873
Contractor processing administrative fees related to current year	11,960,034	13,756,828	25,716,862
Paid during current year	<u>(256,484,335)</u>	<u>(177,115,259)</u>	<u>(433,599,594)</u>
Balance at June 30, 2010	<u>\$ 38,334,060</u>	<u>\$ 12,867,761</u>	<u>\$ 51,201,821</u>
Balance at July 1, 2010	\$ 38,334,060	\$ 12,867,761	\$ 51,201,821
Current year claims and changes in estimates	231,188,748	189,723,257	420,912,005
Contractor processing administrative fees related to current year	11,746,538	14,839,743	26,586,281
Paid during current year	<u>(239,876,668)</u>	<u>(202,154,970)</u>	<u>(442,031,638)</u>
Balance at June 30, 2011	<u>\$ 41,392,678</u>	<u>\$ 15,275,791</u>	<u>\$ 56,668,469</u>

Below is a summary of benefit claims payable by carrier at June 30, 2011 and 2010:

	2011	
	Active Employees	Retirees
Benefit claims payable:		
Benefit claims - HMA	\$ 759,546	\$ 6,773
Benefit claims - HMSA	15,983,113	9,480,775
Benefit claims - InformedRx	1,714,449	4,656,617
IBNR for Self Funded Plans	21,958,100	-
Admin Fee - HMA	92,573	3,785
Admin Fee - HMSA	884,232	902,938
Admin Fee - informedRx	665	224,903
	<u>\$ 41,392,678</u>	<u>\$ 15,275,791</u>

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	2010	
	Active Employees	Retirees
Benefit claims payable:		
Benefit claims - HMA	\$ 603,211	\$ 3,152
Benefit claims - HMSA	13,515,719	7,342,185
Benefit claims - InformedRx	1,969,864	4,536,114
IBNR for Self Funded Plans	21,301,000	-
Admin Fee - HMA	94,529	1,719
Admin Fee - HMSA	849,062	822,051
Admin Fee - informedRx	675	162,540
	<u>\$ 38,334,060</u>	<u>\$ 12,867,761</u>

According to the terms of contracts with HMSA and informedRx, the Trust Fund was required to make a deposit to cover estimated claims costs for the self-funded medical and prescription drug plans. The deposits held by the carriers for the self-funded medical and prescription drug plans as of June 30, 2011 and 2010, are as follows:

	Active Employees	Retirees	Total
HMSA – Medical and drug contract	\$ 6,300,000	\$ 3,700,000	\$ 10,000,000
informedRx (formerly NHMCS) -			
Drug contract	3,008,000	6,392,000	9,400,000
HMA - Medical contract	<u>2,200,680</u>	<u>156,076</u>	<u>2,356,756</u>
	<u>\$ 11,508,680</u>	<u>\$ 10,248,076</u>	<u>\$ 21,756,756</u>

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(7) SUMMARY OF CONTRIBUTIONS AND PRE-FUNDED DEPOSITS

The employer and employee contributions recognized and deposits received for the years ended June 30, 2011 and 2010, were as follows:

	2011		
	Active Employees	Retirees	Total
Required contributions			
Employer			
State of Hawaii	\$ 134,260,561	\$ 246,355,234	\$ 380,615,795
State of Hawaii - HSTA	27,246,171	12,083,955	39,330,126
City & County of Honolulu	40,285,371	62,811,760	103,097,131
County of Hawaii	11,402,215	13,795,387	25,197,602
County of Maui	11,989,191	10,868,475	22,857,666
County of Kauai,			
including Department of Water	5,521,342	6,814,806	12,336,148
Board of Water Supply – Honolulu	2,424,859	5,091,074	7,515,933
County of Hawaii - Department of Water	785,257	757,678	1,542,935
	<u>233,914,967</u>	<u>358,578,369</u>	<u>592,493,336</u>
Employee	<u>164,654,202</u>	<u>1,260,594</u>	<u>165,914,796</u>
	<u>398,569,169</u>	<u>359,838,963</u>	<u>758,408,132</u>
Pre-funded deposits			
Employer			
County of Hawaii	-	17,307,000	17,307,000
County of Kauai,			
including Department of Water	-	6,182,000	6,182,000
Board of Water Supply – Honolulu	-	7,300,000	7,300,000
County of Hawaii - Department of Water	-	1,310,000	1,310,000
	<u>-</u>	<u>32,099,000</u>	<u>32,099,000</u>
Subtotal – required and pre-funding deposits	<u>398,569,169</u>	<u>391,937,963</u>	<u>790,507,132</u>
Less: amounts received for administrative fees	<u>(3,217,590)</u>	<u>(2,213,681)</u>	<u>(5,431,271)</u>
Total contributions and deposits			
received for benefit payments	<u>\$ 395,351,579</u>	<u>\$ 389,724,282</u>	<u>\$ 785,075,861</u>

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	2010		
	Active employees	Retirees	Total
Required contributions			
Employer			
State of Hawaii	\$ 127,245,376	\$ 224,625,023	\$ 351,870,399
City & County of Honolulu	39,531,299	57,160,226	96,691,525
County of Hawaii	11,078,480	12,483,917	23,562,397
County of Maui	11,446,612	9,682,157	21,128,769
County of Kauai,			
including Department of Water	5,298,434	6,005,463	11,303,897
Board of Water Supply – Honolulu	2,431,661	4,773,029	7,204,690
County of Hawaii - Department of Water	807,205	663,719	1,470,924
	197,839,067	315,393,534	513,232,601
Employee	158,967,090	1,114,511	160,081,601
	356,806,157	316,508,045	673,314,202
Pre-funded deposits			
Employer			
County of Hawaii	-	15,700,000	15,700,000
County of Maui	-	12,676,000	12,676,000
County of Kauai,			
including Department of Water	-	7,661,750	7,661,750
Board of Water Supply – Honolulu	-	4,000,000	4,000,000
County of Hawaii - Department of Water	-	1,300,000	1,300,000
	-	41,337,750	41,337,750
Subtotal – required and pre-funding deposits	356,806,157	357,845,795	714,651,952
Less: amounts received for administrative fees	(3,019,049)	(2,097,983)	(5,117,032)
Total contributions and deposits			
received for benefit payments	\$ 353,787,108	\$ 355,747,812	\$ 709,534,920

The required contributions include both contributions for self-insured and fully-insured plans. The self-insured contributions are reported as operating revenues in the statement of revenues, expenses and changes in net deficit for the enterprise fund. The contributions related to the fully-insured plans are included as a component of the premium payable on the statements of net assets for the enterprise fund and the statements of fiduciary assets and liabilities for the agency fund. Contributions related to the fully-insured plans for the year ended June 30, 2011 for the enterprise fund and agency fund, respectively were \$152,027,760 and \$79,319,379 and for the year ended June 30, 2010 for the enterprise fund and agency fund, respectively were \$103,511,078 and \$62,115,956.

As a result of plan operations in the current year, the Trust Fund utilized previously built-up reserves to cover the cost of healthcare benefits resulting in a transfer from the agency fund to the enterprise fund of \$2,198,481 for the year ended June 30, 2010. A similar transfer was not necessary for 2011.

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(8) RETIREMENT BENEFITS

A. Employees' Retirement System

Plan Description

All eligible employees of the State are required by Chapter 88 of the Hawaii Revised Statutes to become members of the Employees' Retirement System of the State of Hawaii (ERS), a cost-sharing multiple-employer public employee retirement plan. The ERS provides retirement benefits as well as death and disability benefits. The ERS issues a publicly available comprehensive annual financial report that includes financial statements and required supplementary information for ERS. That report may be obtained by writing to the ERS at 201 Merchant Street, Suite 1400, Honolulu, Hawaii 96813.

The ERS consists of a contributory plan and a noncontributory plan. Employees covered by Social Security on June 30, 1984 were given the option of joining the noncontributory plan or remaining in the contributory plan. All new employees hired after June 30, 1984, who are covered by Social Security, are generally required to join the noncontributory plan. Both plans provide a monthly retirement allowance based on the employee's age, years of credited service, and average final compensation (AFC). The AFC is the average salary earned during the five highest paid years of service, including the payment of salary in lieu of vacation, if the employee became a member prior to January 1, 1971. The AFC for members hired on or after this date is based on the three highest paid years of service excluding the payment of salary in lieu of vacation. Vesting requirements for the contributory and noncontributory plans are five years and ten years, respectively. All contributions, benefits and eligibility requirements are governed by Chapter 88.

On July 1, 2006, a new hybrid contributory plan became effective pursuant to Act 179, SLH of 2004. Members in the hybrid plan are eligible for retirement at age 62 with 5 years of credited service or age 55 and 30 years of credited service. Members will receive a benefit multiplier of 2% for each year of credited service in the hybrid plan. The benefit options are similar to the current contributory plan. Approximately 58,000 current members, all members of the noncontributory plan and certain members of the contributory plan, are eligible to join the new hybrid plan. Most of the new employees hired from July 1, 2006 are required to join the hybrid plan.

Funding Policy

The contribution rate for State employees administering the Trust Fund is approximately 6.05% of pay for 2011 and 2010. The actuarial cost or funding method used to calculate the total employer contribution required is the entry age normal actuarial cost method. Under this method, the employer contribution rates are a fixed percentage of compensation, including normal cost plus amounts required to pay for the unfunded actuarial accrued liability.

The employer contribution rate for June 30, 2011 and 2010, was 15%.

The Trust Fund's share of the aggregated pension expense was approximately \$197,900, \$169,800, and \$186,000 for the years ended June 30, 2011, 2010 and 2009, respectively, and the annual expense is included in the financial statements.

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Refer to the State's basic financial statements for information regarding required supplementary information regarding the funding progress and plan information for State Employees.

B. Postemployment Health Care and Life Insurance Benefits

Plan Description

In addition to providing pension benefits, the State, pursuant to HRS Chapter 87A, provides certain health care and life insurance benefits to all qualified retirees under an agent multiple-employer defined benefit plan. The plan's participating employers include the State and Counties of Honolulu, Hawaii, Maui and Kauai (Counties).

For employees hired before July 1, 1996, and who retire with ten or more years of credited service, the State and the Counties pay 100% of the base monthly contribution set forth under HRS Section 87A- 33(b) for retirees enrolled in Medicare or non-Medicare health benefit plans. For retirees with fewer than ten years of credited service, the State and Counties pay 50% of the base monthly contribution set forth under HRS Section 87A-33(b).

For employees hired after June 30, 1996 but before July 1, 2001, and who retire with fewer than 10 years of service, the State and Counties make no contributions. For those retiring with at least 10 years but fewer than 15 years of service, the State and Counties pay a monthly contribution equal to 50% of the base monthly contribution set forth under HRS Section 87A-33(b). For employees retiring with at least 15 years but fewer than 25 years of service, the State and Counties pay a monthly contribution equal to 75% of the base monthly contribution set forth under HRS Section 87A-33(b). For employees retiring with at least 25 years of service, the State and Counties pay a monthly contribution equal to 100% of the base monthly contribution set forth under HRS Section 87A-33(b).

The contribution rates for employees hired after June 30, 2001, are consistent with the contribution rates for those hired after June 30, 1996, but only self plan base monthly contribution rates are applied. Those retirees may elect to enroll additional dependents, but they must pay the additional cost.

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As of July 1, 2009, the date of the most recent actuarial valuation the plan membership was as follows:

Employer:	Retirees (including Surviving Spouse) Receiving Benefits	Deferred Vested Members not yet Receiving Benefits	Active Employees	Total
State of Hawaii	28,449	3,407	38,534	70,390
State of Hawaii - HSTA	2,015	1,003	13,195	16,213
City & County of Honolulu	6,286	637	8,751	15,674
County of Hawaii	1,290	127	2,327	3,744
County of Maui	1,051	166	2,390	3,607
County of Kauai, including Department of Water	633	85	1,076	1,794
Board of Water Supply – Honolulu	564	43	549	1,156
County of Hawaii - Department of Water Supply	78	-	181	259
	<u>40,366</u>	<u>5,468</u>	<u>67,003</u>	<u>112,837</u>

Funding Policy

Contributions to the plan are made by both the participating employers and employees. Contribution amounts are established by statute and are currently based on the pay-as-you-go amounts billed by the Trust Fund to the employers; however, employers may elect to make additional deposits based on their respective actuarial valuations. The retirees are responsible to pay the difference if the base contribution is less than the cost of the monthly premium. The current contributions are not sufficient to provide adequate assets to pay benefits when due in accordance with the requirements of GASB 43.

The participants required contribution to the Trust Fund is based on the pay-as-you-go basis and the actuarial determined annual required contribution (ARC) amount for the years ended June 30, 2011 and 2010, based on the July 2009, actuarial valuations, were as follows:

Employer:	2011		
	Required Contribution for June 30, 2011 (pay- as-you-go basis) ¹	ARC for June 30, 2011 ¹	ARC as a Percentage (%) of Covered Payroll ²
State of Hawaii	\$ 246,355,234	\$ 842,260,000	46.1%
State of Hawaii - HSTA	12,083,955	211,862,000	30.8%
City & County of Honolulu	62,811,760	150,711,000	27.8%
County of Hawaii	13,795,387	34,969,000	27.5%
County of Maui	10,868,475	31,766,000	22.9%
County of Kauai, including Department of Water	6,814,806	16,483,000	23.8%
Board of Water Supply – Honolulu	5,091,074	10,387,000	25.6%
County of Hawaii - Department of Water Supply	757,678	2,319,000	24.6%
	<u>\$ 358,578,369</u>	<u>\$ 1,300,757,000</u>	

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¹ Required contributions for the State of Hawaii – HSTA represent requirements for the six month period of January 1, 2011 through June 30, 2011. Effective January 1, 2011, benefits for the HSTA participants were administered by the Trust Fund. The ARC for State of Hawaii – HSTA represents the ARC for the full fiscal year ended June 30, 2011.

² Percentages are an estimate based information included in the actuarial valuation dated July 1, 2009. Actual amounts for fiscal year 2011 were not available.

	2010		
	Required Contribution for June 30, 2010 (pay-as-you-go basis)	ARC for June 30, 2010	ARC as a Percentage (%) of Covered Payroll
Employer:			
State of Hawaii	\$ 224,625,023	\$ 806,981,000	41.9%
City & County of Honolulu	57,160,226	113,135,000	20.3%
County of Hawaii	12,483,917	25,046,000	18.8%
County of Maui	9,682,157	21,800,000	16.1%
County of Kauai,			
including Department of Water	6,005,463	11,926,000	18.1%
Board of Water Supply – Honolulu	4,773,029	7,837,000	23.7%
County of Hawaii - Department of Water Supply	663,719	1,607,000	17.0%
	<u>\$ 315,393,534</u>	<u>\$ 988,332,000</u>	

Beginning in fiscal year 2008, the Trust Fund receives and holds deposits from participating employers to pre-fund retiree benefits on behalf of the employees in a separate account in the agency fund and allocates any interest earned related to those the pre-funding deposits based on accumulated amounts to date. These deposits do not meet the criteria of a contribution to the other postemployment benefits plan as the plan does not meet the criteria of a trust fund under GASB 43. The cumulative deposits and interest held by the Trust Fund in the agency fund for pre-funding are as follows for the years ended June 30, 2011 and 2010:

	2011	2010
Board of Water Supply – Honolulu	\$ 14,555,346	\$ 7,249,412
County of Hawaii	61,901,669	44,560,764
County of Maui	25,135,264	25,116,132
County of Kauai, including Department of Water	21,144,981	14,947,572
Hawaii County Department of Water Supply	4,478,575	3,166,173
City & County of Honolulu	40,172,152	40,142,037
	<u>\$ 167,387,987</u>	<u>\$ 135,182,090</u>

Each participating employer is required to disclose additional information with regard to funding policy, the employers' annual OPEB cost and contributions made, the funded status and funding progress of the employer's individual plan, and actuarial methods and assumptions used.

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Annual OPEB Cost and Net OPEB Obligation Related to the Trust Fund

The employees that administer the Trust Fund are employees of the State. The Trust Fund's annual other postemployment (OPEB) cost (expense) is allocated by the State based on the Trust Fund's proportionate share of contributions for postemployment health benefits and was calculated at 0.0393% and 0.0393% of the State's annual required contribution (ARC) for the years ended June 30, 2011 and 2010, respectively. The ARC is an amount actuarially determined in accordance with GASB 45, which was implemented effective July 1, 2007.

The following table shows the components of the annual OPEB cost, the amount contributed to the plan, and changes in the Trust Fund's net OPEB obligation for the years ended June 30, 2011 and 2010.

	2011	2010
Annual required contribution	\$ 272,357	\$ 272,953
Interest on net OPEB obligation	16,901	8,920
Adjustment to annual required contribution	<u>(15,365)</u>	<u>(8,116)</u>
Annual OPEB cost	273,893	273,757
Contributions made	<u>(82,385)</u>	<u>(75,991)</u>
Increase in net OPEB obligation	191,508	197,766
Net OPEB obligation at beginning of year	<u>543,690</u>	<u>345,924</u>
Net OPEB obligation at end of year	<u><u>\$ 735,198</u></u>	<u><u>\$ 543,690</u></u>

The percentage of annual OPEB cost contributed was 30.1%, 27.8% and 36.1% for the years ended June 30, 2011, 2010 and 2009, respectively.

Actuarial Methods and Assumptions Used in the State's Actuarial Valuation

Projections of benefits for financial reporting purposes are based on the substantive plan (the plan as understood by the employer and plan members) and include the types of benefits provided at the time of each valuation and the historical pattern of sharing of benefit costs between the employer and plan members to that point. The actuarial methods and assumptions used include techniques that are designed to reduce the effects of short-term volatility in actuarial accrued liabilities and the actuarial value of assets, consistent with the long-term perspective of the calculations.

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Additional information for the latest actuarial valuation follows:

Valuation date	7/1/2009
Actuarial cost method	Entry age normal
Amortization method	Level percentage of payroll, open
Amortization period	30 years
Actuarial assumptions:	
Investment rate of return	4%
Healthcare cost trend rate (1):	
Medical and prescription drug, pre 65	10.5% initial; 5% ultimate
Medical and prescription drug, post 65	10.25% initial, 5% ultimate
Dental	6% initial; 4% ultimate
Vision	4% initial; 3% ultimate
Medicare Part B	14.6% initial; 5% ultimate
Projected salary increases	3.5%

(1) Includes an inflation assumption of 3%.

Refer to the State's basic financial statements for information regarding required supplementary information regarding the funding progress and plan information for State Employees.

(9) COMMITMENTS AND CONTINGENCIES

Deferred Compensation

The State offers its employees a deferred compensation plan created in accordance with Internal Revenue Code Section 457. The plan, available to all State employees, permits employees to defer a portion of their salary until future years. The deferred compensation is not available to employees until termination, retirement, death, or unforeseeable emergency.

All plan assets are held in a trust fund to protect them from claims of general creditors. The State has no responsibility for loss due to the investment or failure of investment of funds and assets in the plan, but does have the duty of due care that would be required of an ordinary prudent investor. Accordingly, the assets and liabilities of the State's deferred compensation plan are not reported in the State's or Trust Fund's financial statements.

Litigation

Dannenberg, et al. v. State of Hawai'i, Civil No. 06-1-1141 PWB
(formerly known as Everson, et al. v. State of Hawai'i, et al.)

On June 30, 2006, a class action lawsuit was brought in the First Circuit Court, State of Hawaii, by certain State and county retirees against the Trust Fund, the Trust Fund's board of trustees, and the State ("collectively "State defendants"), as well as various county governments that participate in the Trust Fund's health benefit plans. The plaintiffs' amended complaint alleges various claims based on an argument that the Trust Fund is constitutionally, statutorily, and contractually required to provide health benefit plans that provide retirees and their dependents with benefits that are substantially equal to those provided to active employees and their dependents. In addition, the plaintiffs claim that the Trust Fund's failure to provide substantially equal health benefit plans to retirees and their dependents was negligent. The plaintiffs seek declaratory and

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injunctive relief, damages, and attorneys' fees and costs. The damages sought appear to be amounts that the plaintiffs (and their class) have paid for health benefits, which they would not have paid had their plans been equivalent to the Trust Fund's active employee plans. The defendants filed motions to dismiss the plaintiffs' complaint. The judge decided that the Trust Fund had primary jurisdiction over issues involved in the plaintiffs' claims and stayed this action pending referral of those issues to the Trust Fund.

In May and June 2007, the plaintiffs filed a petition with the Trust Fund's board of trustees seeking a declaratory ruling regarding certain issues raised by their lawsuit. The Trust Fund's board of trustees held a hearing on the plaintiffs' petition under the Trust Fund rules and Chapter 91 of the HRS. After the hearing, the Trust Fund's board of trustees issued Findings of Fact, Conclusions of Law, and Order. The plaintiffs filed an appeal for judicial review of the Findings of Fact, Conclusions of Law, and Order under HRS §91-14. Plaintiffs appealed the Trust Fund's rulings to the First Circuit Court, State of Hawaii. After briefing and oral argument, the First Circuit Court overturned the Trust Fund's Board's rulings. The State and the Trust Fund's Board appealed the First Circuit Court's decision. On March 26, 2010, the Hawaii Supreme Court affirmed in part and reversed in part the First Circuit Court's decision. The Hawaii Supreme Court held that the First Circuit Court: (1) did not err in concluding that a retired state and county government employee's health benefits are protected by Article XVI, Section 2 of the Hawaii Constitution as "accrued benefits," and (2) erred by concluding that HRS Chapter 87A requires that postemployment health benefits reasonably approximate those of active workers. On March 2, 2011, Judge Patrick Border of the First Circuit Court, State of Hawaii, heard and granted Plaintiffs' motion for class action certification. The class certified was all individuals who began working for the Territory of Hawaii, State of Hawaii, or any political subdivision thereof, prior to July 1, 2003, and who qualify as a retired employee-beneficiary and/or whose dependent qualifies as a dependent-beneficiary as those terms are defined in sections 87A-1 and 87A-21 of the Hawaii Revised Statutes.

The parties are currently engaged in discovery. No trial date has yet been set. State Defendants intend to continue to vigorously defend against Plaintiffs' claims in this lawsuit. The outcome of this lawsuit cannot be determined and no amount has been recorded in the financial statements as of or for the year ended June 30, 2011.

Kono, et al. v. Abercrombie, Civil No. 10-1-1966-09 KKS

On September 14, 2010, the Hawaii State Teachers Association Voluntary Employees Beneficiary Association Trust (VEBA Trust) and two participants in the VEBA Trust health plans filed a Complaint against the State of Hawaii (State) alleging: (1) The State diminished and impaired accrued health benefits of the active and retired teachers participating in the VEBA Trust health plans in violation of Article XVI, Section 2 of the Hawaii Constitution, by enacting Act 106, Session Laws of Hawaii 2010 (Act 106) and transferring the VEBA members to the Trust Fund and/or reassigning the administration of the VEBA Trust health benefits plans from the VEBA Trust to the Trust Fund; and (2) the State had taken \$3.96 million in surplus funds from the VEBA Trust and this similarly diminished or impaired the VEBA members' accrued health benefits in violation of Article XVI, Section 2. Plaintiffs also alleged breach of contract by the State, and that the taking of the \$3.96 million constituted unjust enrichment.

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
STATE OF HAWAII
Notes to Financial Statements
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On October 12, 2010, the State filed a motion for judgment on the pleadings and to dismiss the Complaint in its entirety. On November 4, 2010, Plaintiffs filed a motion for preliminary injunction to maintain the status quo and prevent the transfer of the VEBA members to the Trust Fund.

Both the State's motion and Plaintiffs' motion were heard by the Honorable Karl K. Sakamoto, First Circuit Court, on December 7, 2010. While denying both motions, Judge Sakamoto held that the VEBA members did not have an accrued benefit in staying in the VEBA Trust health plans and that the transfer of VEBA members back to the Trust Fund health plans under Act 106 did not violate Article XVI, Section 2. The court further held that pursuant to Article XVI, Section 2, the VEBA members had an accrued benefit in the standard of coverage that they enjoyed in the VEBA Trust health plans and were entitled to maintain the same standard of coverage when they were transferred back to the Trust Fund. Regarding the \$3.96 million, Judge Sakamoto found that to the extent that the surplus funds were part of the accrued benefits of the VEBA members who paid into the surplus, "the appropriate remedy is to allow the taking of the VEBA Trust surplus but that such amounts to be set aside to help ensure that the VEBA members can maintain their standard of accrued benefits."

On March 15, 2011, pursuant to his oral ruling, Judge Sakamoto issued an order denying the State's motion for judgment on the pleadings, an order denying Plaintiffs' motion for preliminary injunction, and a final judgment. The State timely filed an appeal of the two orders and the final judgment. Recently, the Hawaii Intermediate Court of Appeals dismissed the appeal because the form of Judge Sakamoto's final judgment did not comply with applicable requirements.

On October 6, 2011, the First Circuit Court entered an Amended Final Judgment Partly in Favor of Plaintiffs and Partly in Favor of the State. The Amended Final Judgment provides: (a) Act 106 does not violate Article XVI, Section 2; (b) the transfer of VEBA members to the Trust Fund health plans pursuant to Act 106 does not violate Article XVI, Section 2 nor does it breach any contract between VEBA members and the State; (c) former VEBA members who transfer to the Trust Fund pursuant to Act 106 are entitled to maintain the same standard of coverage benefits in their Trust Fund health benefits plans; and (d) to the extent that the surplus funds that the VEBA Trust returned to the State were part of accrued benefits of the VEBA members who paid into the surplus, such funds shall be used by the State to ensure that VEBA members can maintain their standard of coverage benefits.

On October 14, 2011, the State filed a Notice of Appeal of the Amended Final Judgment; on November 8, 2011, Plaintiffs filed a cross-appeal. This case is currently pending before the Hawaii Intermediate Court of Appeals. The State intends to vigorously defend its arguments on appeal. The outcome of this lawsuit cannot be determined and no amount has been recorded in the financial statements as of or for the year ended June 30, 2011.

(10) RISK MANAGEMENT

The Trust Fund is exposed to various risks of loss related to torts; theft of, damage to, or destruction of assets; errors or omissions; and workers' compensation. In accordance with HRS 87A-25, the Trust Fund has obtained fiduciary liability insurance with an annual aggregate for losses of \$10 million and a fidelity bond to cover employee dishonesty with an annual aggregate for losses of \$1 million. In addition, the Trust Fund also obtained a public officials and employment practices insurance policy to cover any wrongful acts or employment practices

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
STATE OF HAWAII
Notes to Financial Statements
June 30, 2011 and 2010

violation in which the Trust Fund retains the first \$25,000 per occurrence and the annual aggregate for losses is \$3 million.

The Trust Fund is covered under the State's self-insurance program for workers' compensation. During fiscal years 2011 and 2010, the Trust Fund paid \$11,076 and \$16,771, respectively, in workers' compensation premiums to the State's General Fund.

There have been no significant reductions in insurance coverage and the amount of settlements has not exceeded insurance coverage for each of the past three fiscal years.

(11) LEASE COMMITMENT

The Trust Fund's office is located in the City Financial Tower. The State Department of Accounting and General Services (Lessee) leases the Trust Fund's office from the Employees' Retirement System of the State of Hawaii (Lessor). The lease is being paid for by the Trust Fund.

The lease commenced on January 1, 2005 and expired on November 30, 2009. In December 2009, the lease was amended with an expiration date of October 31, 2014. In January 2011, the lease was amended to surrender and acquire office space. The total rentable space was reduced from 10,324 square feet to 9,555 square feet. In addition to minimum rent, the lease provides for the payment of common area maintenance charges. At June 30, 2011, the aggregated minimum rental commitment under the noncancelable operating lease is as follows:

<u>Year ending June 30,</u>	
2012	306,000
2013	310,000
2014	310,000
2015	<u>104,000</u>
	<u>\$ 1,030,000</u>

The rent expense for the year ended June 30, 2011 and 2010, was \$306,199 and \$314,994, respectively.

(12) SUBSEQUENT EVENTS

Carrier Contracts

The carrier contracts for the active employees and retiree plans for the Trust Fund, including contracts for HSTA participants were extended from July 1, 2011, through December 27, 2011, and again from December 28, 2011, through December 31, 2011. Approvals were received from the State Procurement Office to extend these contracts. In addition contracts for prescription drug plans were extended for six months from January 1, 2012.

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
STATE OF HAWAII
Required Supplementary Information
Four-Year Loss Development Information
June 30, 2011 and 2010

SELF-INSURED HEALTHCARE PLANS

The Trust Fund began providing and administering fully-insured health and other benefit plans beginning July 1, 2003. The Trust Fund also began providing self-insured plans effective July 1, 2007. Therefore, the loss development tables on the following page show data for four successive policy years starting from the fiscal year ended June 30, 2008, for active employee and retiree self-insured plans.

The tables on the following page illustrates how the Trust Fund's earned revenue (net of reinsurance) and investment income compare to related costs of loss (net of loss assumed by reinsurers) and other expenses assumed by the Trust Fund related to the self-insured activities as of the end of each of the past four years. The rows of the table are defined as follows:

- (1) This line shows the total of each fiscal year's gross earned contribution revenue and investment revenue, contribution revenue ceded to reinsurers, and net earned contribution revenue and reported investment revenue.
- (2) This line shows each fiscal year's other operating costs of the Trust Fund including overhead and claims expense not allocable to individual claims.
- (3) This line shows the Trust Fund's gross incurred claims and allocated claim adjustment expenses, claims assumed by reinsurers, and net incurred claims and allocated adjustment expenses (both paid and accrued) as originally reported at the end of the first year in which the event that triggered coverage under the contract occurred (called policy year).
- (4) This section of four rows shows the cumulative net amounts paid as of the end of successive years for each policy year.
- (5) This line shows the latest re-estimated amount of claims assumed by reinsurers as of the end of the current year for each policy year.
- (6) This section of four rows shows how each policy year's net incurred claims increased or decreased as of the end of successive years. (This annual re-estimation results from new information received on known claims, reevaluation of existing information on known claims, and emergence of new claims not previously known.)
- (7) This line compares the latest re-estimated net incurred claims amount to the amount originally established (line 3) and shows whether this latest estimate of net claims cost is greater or less than originally thought.

As data for individual policy years mature, the correlation between original estimates and re-estimated amounts commonly is used to evaluate the accuracy of net incurred claims currently recognized in less mature policy years. The columns of the tables show data for successive policy years.

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
STATE OF HAWAII
Required Supplementary Information
Four-Year Loss Development Information
June 30, 2011

Self-Insured Active Employee Healthcare Benefit Plans

	2008	2009	2010	2011
1. Required contribution and investment revenue:				
Earned	\$ 195,936,354	\$ 221,762,304	\$ 256,755,699	\$ 246,004,463
Ceded	-	-	-	-
Net earned	<u>\$ 195,936,354</u>	<u>\$ 221,762,304</u>	<u>\$ 256,755,699</u>	<u>\$ 246,004,463</u>
2. Unallocated expenses	<u>\$ 2,382,253</u>	<u>\$ 2,324,705</u>	<u>\$ 3,464,359</u>	<u>\$ 3,828,417</u>
3. Estimated claims and expenses, end of policy year:				
Incurred	\$ 233,857,827	\$ 267,973,485	\$ 244,971,987	\$ 241,048,648
Ceded	-	-	-	-
Net incurred	<u>\$ 233,857,827</u>	<u>\$ 267,973,485</u>	<u>\$ 244,971,987</u>	<u>\$ 241,048,648</u>
4. Net paid (cumulative) as of:				
End of policy year	\$ 196,730,425	\$ 262,097,745	\$ 251,299,883	\$ 237,215,369
One year later	231,169,876	283,354,922	239,959,499	
Two years later	231,157,984	283,378,367		
Three years later	231,157,984			
5. Reestimated ceded claims and expenses	\$ -	\$ -	\$ -	\$ -
6. Reestimated net incurred claims and expenses:				
End of policy year	\$ 233,857,827	\$ 267,973,485	\$ 244,971,987	\$ 241,048,648
One year later	231,169,876	283,354,922	239,959,499	
Two years later	231,157,984	283,378,367		
Three years later	231,157,984			
7. Increase (decrease) in estimated net incurred claims and expenses from end of policy year	\$ (2,699,843)	\$ 15,404,882	\$ (5,012,488)	\$ -

Self-Insured Other Postemployment Health Benefit Plans

	2008	2009	2010	2011
1. Required contribution and investment revenue:				
Earned	\$ 16,722,162	\$ 166,760,728	\$ 211,253,620	\$ 235,439,876
Ceded	-	-	-	-
Net earned	<u>\$ 16,722,162</u>	<u>\$ 166,760,728</u>	<u>\$ 211,253,620</u>	<u>\$ 235,439,876</u>
2. Unallocated expenses	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>
3. Estimated claims and expenses, end of policy year:				
Incurred	\$ 167,508,722	\$ 183,539,058	\$ 169,514,348	\$ 199,476,186
Ceded	-	-	-	-
Net incurred	<u>\$ 167,508,722</u>	<u>\$ 183,539,058</u>	<u>\$ 169,514,348</u>	<u>\$ 199,476,186</u>
4. Net paid (cumulative) as of:				
End of policy year	\$ 143,959,614	\$ 181,276,558	\$ 168,365,724	\$ 197,019,136
One year later	164,519,936	188,620,467	169,424,601	
Two years later	164,731,483	188,597,900		
Three years later	164,731,483			
5. Reestimated ceded claims and expenses	\$ -	\$ -	\$ -	\$ -
6. Reestimated net incurred claims and expenses:				
End of policy year	\$ 167,508,722	\$ 183,539,058	\$ 169,514,348	\$ 199,476,186
One year later	164,519,936	188,620,467	169,424,601	
Two years later	164,731,483	188,597,900		
Three years later	164,731,483			
7. Increase (decrease) in estimated net incurred claims and expenses from end of policy year	\$ (2,777,239)	\$ 5,058,842	\$ (89,747)	\$ -

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**HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
STATE OF HAWAII**

ENTERPRISE FUND

Schedule of Administrative Operating Expenses

Years ended June 30, 2011 and 2010

	<u>2011</u>	<u>2010</u>
Operating expense:		
Personnel services	\$ 2,034,019	\$ 1,668,784
Contracted services	1,958,482	1,787,862
Equipment	37,344	179,828
Occupancy	306,199	314,994
Printing and binding	22,987	75,278
Insurance	80,679	85,767
Repairs and maintenance	23,813	31,511
Postage	57,105	104,350
Telephone	42,115	24,858
Transportation	14,012	12,511
Rental of equipment	21,727	22,643
Supplies	17,013	21,340
Training	11,270	110
Other	961	5,075
Total administrative expenses	<u>\$ 4,627,726</u>	<u>\$ 4,334,911</u>

**HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
STATE OF HAWAII**

AGENCY FUND

Schedule of Changes in Fiduciary Assets and Liabilities
Year ended June 30, 2011

	<u>July 1, 2010</u>
Assets	
Cash and cash equivalents	\$ 49,889,100
Cash received for pre-funding deposits	135,182,090
Cash and investments held by fiscal agent	-
Receivables	
Medicare reimbursements from individuals, net of allowance of \$491,146 in 2011 and \$403,332 in 2010	173,878
Premium receivable from State of Hawaii and counties	27,283,772
Other receivables held by insurance companies	24,584
Rebates receivable	3,385,529
Accrued interest receivable	230,790
Total receivables	<u>31,098,553</u>
Deposits	<u>10,248,076</u>
Total assets	<u><u>\$ 226,417,819</u></u>
Liabilities	
Due to State of Hawaii	\$ 62
Due to retirees	2,415
Retrospective premium payable	1,014,382
Premiums payable	5,716,500
Benefit claims payable	12,867,761
Amounts held on behalf of employers for benefits	206,816,699
Total liabilities	<u><u>\$ 226,417,819</u></u>

<u>Additions</u>	<u>Deductions</u>	<u>June 30, 2011</u>
\$ 507,798,100	\$ (466,886,701)	\$ 90,800,499
13,588,649	(148,770,739)	-
169,272,987	-	169,272,987
47,038,400	(46,823,071)	389,207
360,950,329	(355,959,209)	32,274,892
42,721	(24,584)	42,721
8,400,267	(6,721,887)	5,063,909
190,661	(385,767)	35,684
<u>416,622,378</u>	<u>(409,914,518)</u>	<u>37,806,413</u>
<u>-</u>	<u>-</u>	<u>10,248,076</u>
<u>\$ 1,107,282,114</u>	<u>\$ (1,025,571,958)</u>	<u>\$ 308,127,975</u>
\$ -	\$ -	\$ 62
22,738	(18,281)	6,872
1,913,299	(994,770)	1,932,911
132,739,821	(130,534,509)	7,921,812
230,661,497	(228,253,467)	15,275,791
283,022,894	(206,849,066)	282,990,527
<u>\$ 648,360,249</u>	<u>\$ (566,650,093)</u>	<u>\$ 308,127,975</u>

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To the Board of Directors of
the Hawaii Employer-Union Health Benefits Trust Fund
of the State of Hawaii and
Ms. Marion Higa, State Auditor
State of Hawaii, Office of the Auditor
Honolulu, HI

**Independent Auditor's Report on Internal Control Over
Financial Reporting and on Compliance and Other Matters
Based on an Audit of Financial Statements Performed in
Accordance With Government Auditing Standards**

We have audited the financial statements of Hawaii Employee-Union Health Benefits Trust Fund of the State of Hawaii (Trust Fund), as of and for the year ended June 30, 2011, and have issued our report thereon dated February 8, 2012. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Internal Control Over Financial Reporting

Management of the Trust Fund is responsible for establishing and maintaining effective internal control over financial reporting. In planning and performing our audit, we considered the Trust Fund's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Trust Fund's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the Trust Fund's internal control over financial reporting.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Trust Fund's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The

results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

We noted certain matters that we reported to management of the Trust Fund in a separate letter dated February 8, 2012.

The Trust Fund's responses to the findings identified in our audit are described in the accompanying schedule of findings and responses. We did not audit the Trust Fund's response and, accordingly, we express no opinion on it.

This report is intended solely for the information and use of the Board of Trustees, Hawaii State Auditor, Trust Fund management and others within the organization and is not intended to be and should not be used by anyone other than these specified parties.

Macias Jini & O'Connell LLP

Newport Beach, California
February 8, 2012

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
STATE OF HAWAII
Schedule of Prior Year Findings and Responses
June 30, 2011

2010-01 Financial Reporting For Self-Insurance Activity

Criteria

Governmental Accounting Standards Board (GASB) Statement No. 10, *Accounting and Financial Reporting for Risk Financing and Related Insurance Issues*, as amended (GASB 10), establishes accounting and financial reporting standards for risk financing and insurance-related activities of state and local governmental entities, including public entity risk pools.

Condition

During our audit, we evaluated the Trust Fund's application of GASB 10, and noted that management had not appropriately applied the requirements of GASB 10 related to the Trust Fund's self-insurance activities. Prior to fiscal year 2010, the Trust Fund reported premium revenues and benefit claims expense as a net nonoperating revenue or expense for its self-insurance activities. The criteria of GASB 10 requires this activity to be reported as operating revenues and expenses if the risk of loss for claims has transferred from the participant agencies to the Trust Fund. Through our discussions with management and review of the key documents and billing practices, it appears the risk of loss has transferred to the Trust Fund for self-insured programs. For fiscal year 2010, premium revenues of \$253 million were reported as operating revenues and benefit claims expenses of \$248 million were reported as operating expenses.

Cause

Management was not aware of the GASB 10 reporting requirements for the Trust Fund's self-insurance activities.

Effect

In prior years, the self-insurance related gross revenues and expenses were reported net as non-operating revenues. For fiscal year 2010, premium revenues of \$253 million were reported as operating revenues and benefit claims expenses of \$248 million were reported as operating expenses.

Recommendation

We recommend that management identify the key financial reporting standards and periodically review the requirements to determine that financial information is properly accounted for and adequately disclosed. In addition, when changes occur in insurance programs or other activity administered by the Trust Fund, management should identify and review the appropriate accounting and financial reporting standards to determine the impact of the changes.

Management's Response

Management will improve on identifying the impact that changes occurring in Trust Fund insurance programs or other activities have on the appropriate accounting and financial reporting. Management will also improve on its knowledge of GASB Statement No. 10 as it relates to the Trust Fund. It will purchase GASB information and communications such as standards, implementation guides and other publications from the GASB website.

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
STATE OF HAWAII
Schedule of Prior Year Findings and Responses
June 30, 2011

2010-01 Financial Reporting For Self-Insurance Activity (Continued)

Status

Implemented. The Trust Fund has purchased the GASB the Comprehensive Implementation Guide Questions and Answers and Codification of Governmental Accounting and Financial Reporting Standards.

2010-02 Risk Assessment and Financial Reporting

Criteria

The Trust Fund has a fiduciary responsibility as a steward of public funds. In order to fulfill this responsibility, the Trust Fund has designed and implemented internal controls that serve as the first line of defense in safeguarding assets. Additionally, these controls are designed to ensure: (1) effective and efficient operations; (2) reliable financial reporting; and (3) compliance with applicable laws and regulations.

In 1992 the Committee on Sponsoring Organizations of the Treadway Commission (COSO) established a nationally recognized framework for internal control in its *Internal Control – Integrated Framework* and its related *Guidance for Smaller Public Companies: Reporting on Internal Controls over Financial Reporting*. The COSO framework establishes five elements of internal control: (1) Control Environment; (2) Risk Assessment; (3) Control Activities; (4) Information and Communication; and (5) Monitoring. These elements provide a common framework against internal control systems can be assessed and improved. Risk Assessment and Monitoring are integral parts of internal control and management should periodically evaluate the risks and monitor the changes facing the Trust Fund. This process involves evaluating both previously identified risks and potential new risks and providing assurance that: (1) controls are designed properly to address significant risks; and (2) controls are operating effectively.

In March 2006, the Auditing Standards Board (ASB) of the American Institute of Certified Public Accountants (AICPA) adopted a set of eight Statements of Auditing Standards (SAS No. 104 through 111), which, among other things, require auditors to assess an organization's design of controls and determine whether the controls have been placed in operation for all elements of internal control over financial reporting. If controls do not exist, are poorly designed or not operating effectively, the auditor must evaluate the control deficiency and report the deficiency to management, including whether the control deficiency is a significant deficiency or material weakness. These standards were incorporated in the *Government Auditing Standards (July 2007 Revision)* issued by the Comptroller General of the United States and became effective in fiscal year 2008.

Condition

During our audit, we noted that the Trust Fund does not have a formal risk assessment or monitoring process and does not have current policies and procedures documented.

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
STATE OF HAWAII
Schedule of Prior Year Findings and Responses
June 30, 2011

2010-02 Risk Assessment and Financial Reporting (Continued)

Cause

Management has experienced recent turnover in key positions and, as a result, there were limited resources to properly evaluate the Trust Fund's internal controls over financial reporting and document current policies and procedures.

Effect

By not formalizing a risk assessment or monitoring process over financial reporting and not having current documentation of policies and procedures, the Trust Fund is at risk of not identifying deficiencies in the design and operation of the internal controls over financial reporting, which may result in a misstatement in the financial statements not being prevented, or detected and corrected on a timely basis. In addition, if the Trust Fund experiences additional employee turnover, there is a risk that key controls may be missed and/or new employees will not have documentation of proper policies and procedures to ensure that they can carry out their expected function adequately and efficiently.

Recommendation

We recommend that the Trust Fund perform a comprehensive risk assessment analysis, conduct monitoring procedures and document its risk assessment and internal control policies and procedures over its significant transaction cycles. Furthermore, we recommend the Trust Fund review the COSO *Internal Control – Integrated Framework* and its related *Guidance for Smaller Public Companies: Reporting on Internal Controls over Financial Reporting* and adopt the best practices outlined therein. Finally the Trust Fund should periodically report to the Board of Trustees on the results of its risk assessment.

Management's Response

The Trust Fund will be completing the State's Department of Accounting and General Services Self-Assessment of Internal Controls Questionnaire for State Departments and Agencies. After completing the questionnaire, risk controls will be identified and procedures will be documented. If there are any internal control deficiencies identified, the Trust Fund will develop a corrective action plan for each deficiency identified. The Trust Fund will periodically report to the Board of Trustees on the results of its risk assessment.

Status

In process. The Trust Fund's management staff is in the process of completing the State's Department of Accounting and General Services Self-Assessment of Internal Controls Questionnaire.

APPENDIX E
MARKETING SUMMARY

Carrier	Coverage	Response