

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BLUEEARTH BIOFUELS, LLC,

Plaintiff,

VS.

HAWAIIAN ELECTRIC COMPANY, INC.
MAUI ELECTRIC COMPANY, LTD,
ALOHA PETROLEUM, LTD AND
KARL E. STAHLKOPF, INDIVIDUALLY,

Defendants.

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CIVIL ACTION NO. 3-08CV1779-L

**APPENDIX IN FURTHER SUPPORT OF DEFENDANTS HAWAIIAN ELECTRIC
COMPANY, INC., MAUI ELECTRIC COMPANY, LTD. AND KARL E. STAHLKOPF'S
MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT
PURSUANT TO FRCP 12(b)(2) and 12(b)(3)**

Defendants Hawaiian Electric Company, Inc., Maui Electric Company, Ltd. and
Karl E. Stahlkopf file this Appendix of Evidence ("Appendix") in Support of their
Motion to Dismiss Plaintiff's First Amended Complaint. The Appendix contains:

DESCRIPTION	BATES RANGE
Declaration of Karl E. Stahlkopf	App. 01 - 12
Declaration of Joseph Viola	App.13-43

Respectfully submitted,

/s/ C. Michael Mooore

C. Michael Moore
Texas Bar No. 14323600
Gene R. Besen
Texas Bar. No. 24045491
SONNENSCHN NATH & ROSENTHAL LLP
2000 McKinney Ave., Suite 1900
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gbesen@sonnenschein.com

ATTORNEYS FOR DEFENDANTS, HAWAIIAN
ELECTRIC COMPANY, INC., MAUI ELECTRIC
COMPANY, LTD., AND KARL E. STAHLKOPF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendants' Appendix in Support of their Motion to Dismiss Plaintiff's First Amended Complaint was served this 12th day of January, 2009 on the following counsel via ECF:

Michael K. Hurst
Gruber Hurst Johansen & Hail, LLP
1445 Ross Avenue, Suite 2500
Dallas, Texas 75202

/s/ Gene R. Besen
Gene R. Besen

4. HECO's initial introduction to BlueEarth occurred in Hawai'i in February, 2006. HECO met with representatives of BlueEarth including Mr. Landis Maez. In March, 2006 BlueEarth and HECO began discussing a project to supply biodiesel for the Hawaiian Islands. Multiple representatives of HECO and its wholly owned subsidiary, Maui Electric Company ("MECO") met with Mr. Maez in Hawai'i on several occasions during the course of the parties' initial discussions regarding a biodiesel production facility in Hawai'i. I was one of those representatives and I participated in meetings during that time period.

5. After months of negotiations during face-to-face meetings in Hawai'i, on September 27, 2006, HECO and MECO each signed Mutual Non-Circumvention and Non-Disclosure Agreements (the "Non-Disclosure Agreements") with BlueEarth. The Non-Disclosure Agreements were drafted and provided to HECO and MECO by BlueEarth. The Non-Disclosure Agreements were executed and acknowledged by HECO, MECO, and BlueEarth in Maui, Hawai'i on September 27, 2006. Mr. Landis Maez acknowledged the Non-Disclosure Agreements for BlueEarth.

6. On January 29, 2007, after further numerous face-to-face meetings in Maui, Hawai'i, HECO, MECO and BlueEarth executed a Confidential and Proprietary Memorandum of Understanding between Hawaiian Electric Company, Inc., Maui Electric Company, Ltd., and BlueEarth Biofuels, LLC to proceed with evaluation and development of a Biodiesel Production Facility on Maui Electric Company, Ltd.'s Wa'ena Site on Maui, Hawai'i (the "MOU"). A true and correct copy of the MOU is attached hereto as Exhibit "A." As with the Non-Disclosure Agreements, the MOU was exclusively negotiated in Hawai'i, was executed in Hawai'i, and contemplated performance only in Hawai'i. Moreover, the MOU specifically provides that it "shall be governed by, construed and applied in accordance with the laws of the State of Hawai'i." Exhibit A at ¶6. The MOU was executed on behalf of BlueEarth by Mr. Landis Maez

in Hawai`, where he was living at the time. I do not know where Robert Wellington signed the MOU. I do know that BlueEarth had and has an office at 1088 Bishop Street in Honolulu, Hawai`, as shown on its website, <http://www.blueearthbiofuels.com/contact-blueearth-hawaii.html>.

7. The HECO Defendants have been willing, and remain willing, to try to achieve an agreement with BlueEarth in executing the plans for a biodiesel production facility on Maui, Hawai`i despite the hurdles that stand in the way of reaching a final agreement. Unfortunately, BlueEarth has responded to difficulties in the negotiations with this lawsuit, which the HECO defendants deny has any merit.

Contacts with Texas

8. As an Officer of HECO I have knowledge of HECO's business, including its vendors, partners and customers. HECO's and MECO's principal place of business is in Hawai`i. HECO and MECO are organized under the laws of the State of Hawai`i and HECO's and MECO's business operations are exclusively in Hawaii.

9. Neither HECO nor MECO have any business presence in Texas. HECO and MECO do not provide energy, electricity or any other product or service to any individual or entity in Texas. To the extent they have contacts with vendors and professional organizations in Texas, those contacts are, to my understanding, for the purpose of advancing the companies' business interests in Hawai`i.

10. I am a resident of Hawai`i. I have never traveled to Texas in relation to any business with BlueEarth. I have never traveled to Texas in any business capacity whatsoever relating to my work with HECO.

11. As stated above, both the Non-Disclosure Agreements and the MOU were negotiated, executed, and to be performed in Hawai`i. Neither I nor any other representative of

HECO or MECO ever traveled to Texas to do business with BlueEarth. Accordingly, neither I, nor any other representative of HECO ever contemplated or considered that a dispute between BlueEarth and HECO could or would be resolved in Texas. Moreover, as stated above, the MOU specifically states that it shall be governed by, construed and applied in accordance with the laws of State of Hawai'i.

Forum Selection Clause

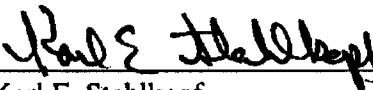
12. The Non-Disclosure Agreement's language providing that the agreement is "enforceable in United States court as the exclusive venue" was never interpreted to mean that venue would be proper in every court in the United States. Rather, HECO and MECO interpreted this provision to mean that the parties' dispute was to be heard in federal court instead of state court. In any event, HECO and MECO never contemplated, discussed or had any reason to surmise that they would be haled to a Texas court to resolve the parties' dispute because HECO and MECO had no dealings with BlueEarth in Texas.

13. Litigating this lawsuit in the Northern District of Texas will be a substantial burden and inconvenience for HECO, MECO and me. Participating in depositions, hearings and attending trial will cost thousands of dollars in travel expenses and lost time. Moreover, HECO will suffer because its officers and employees will be required to spend substantial time preparing for and attending to matters related to this litigation. The lost time and expense associated with this litigation was neither foreseen nor prepared for and no agreement about lawsuits in Texas was ever discussed or negotiated for between the parties. As discussed above, HECO and MECO interpreted the provision upon which BlueEarth relies to mean that the dispute was to be heard in federal court, not that venue would be proper in every federal court in the United States. The substantial inconvenience associated with litigating in Texas makes this litigation far more onerous than if the same litigation were filed in the District of Hawai'i.

14. HECO and MECO have their principal place of business in the State of Hawai'i. I reside in the State of Hawai'i. The events giving rise to this lawsuit, i.e., the alleged breach of the Non-Disclosure Agreements and the MOU could only have occurred in Hawai'i as a result of business relations that developed in Hawai'i.

15. To my knowledge every representative of HECO and MECO that had any contact with BlueEarth resides in Hawai'i. The Non-Disclosure Agreements and MOU were negotiated in Hawai'i. Likewise both documents were executed in Hawai'i and contemplated performance in Hawai'i. Hawai'i, is not only the most convenient forum for this dispute, it is the forum where substantially all of the evidence and witnesses reside and the forum with the greatest connection to this dispute.

I declare that the foregoing is true and correct under penalty of perjury under the laws of the United States.


Karl E. Stahlkopf

Confidential and Proprietary
Memorandum of Understanding
between

Hawaiian Electric Company, Inc., Maui Electric Company, Ltd.
and BlueEarth Biofuels, LLC

to Proceed with Evaluation and Development of a Biodiesel Production Facility
on Maui Electric Company, Limited's Wa'ena Site on Maui, HI

This Memorandum of Understanding ("MOU") is entered between Hawaiian Electric Company, Inc. ("HECO"), [until a Project Specific HECO Unregulated Subsidiary is formed (at which time the rights and obligations of HECO may be transferred in whole or in part to the HECO Unregulated Subsidiary)] (Both HECO and the Unregulated Subsidiary are referred to in this document as "HUS"), Maui Electric Company, Ltd. ("MECO") and BlueEarth Biofuels LLC ("BlueEarth") (individually, "Party," and collectively, the "Parties"). The effective date of this MOU is January 29th, 2007.

PURPOSE:

The purpose of this MOU is to memorialize certain preliminary understandings between the Parties with regard to their affiliation and business relationship with each other, in anticipation of future formal agreements in furtherance thereof, and to document the current understanding of the anticipated roles and responsibilities the Parties may undertake with respect to the evaluation, funding and development of a large-scale biodiesel production facility to be developed by a newly formed limited liability company ("Newco") owned by the Parties, located on MECO-owned land (called the Wa'ena site) on the island of Maui, Hawaii ("Project"). The understandings contained herein may be incorporated into and made a part of subsequent formal and binding agreements executed between the Parties.

GENERAL UNDERSTANDING:

The Parties desire to work together to:

1. Enhance the attainment of the State of Hawaii's renewable energy objectives by facilitating the development of a Biodiesel Production Facility Project co-located by the Parties on MECO's Wa'ena site on Maui, HI. The Project will be planned, developed, permitted, funded, constructed, maintained and operated through the joint efforts of the Parties as outlined in this MOU;
2. Provide an alternative fuel source (specifically biodiesel) made from either locally produced feedstock ("LPF"), when commercially available and economically viable, or imported feedstocks such as but not limited to refined, bleached and deodorized palm oil ("RBD Palm Oil");
3. Further the respective roles and responsibilities of the Parties as delineated herein with regard to the Project;
4. Enhance HECO's public goodwill, by jointly (via the Parties) facilitating the construction and operation of an economically viable company which furthers HECO's financial and social business objectives.

HUS BlueEarth Maui Biodiesel Project MOU



Initials [Signature]
Initials [Signature]
Initials [Signature]

Project Investment, Ownership and Timing Understandings:

The Project's initial phase (of an anticipated three phases) is sized at 40 million gallons per year ("MGPY") (nameplate rating output) with an anticipated \$61MM Project Cost and development/implementation funding timeline as follows:

Project Timing	Funds Required	Type and Use of Funds
January 2007 (upon MOU Signing)	\$800K - \$400K from HUS - \$400K matching funds from BlueEarth	Due Diligence Funding to; - Marshall the Project through HI PUC concept approval (Tolling Agreement and Leased Property Equity Agreement) - Lock-in Engineering and Construction Firms, Define Engineering and Construction Costs & Develop Schedule and DRAFT Construction Contract - Begin Preliminary Permitting work - Prepare Air Permit - Negotiate the Investment Agreement ("IA")
March 2007 (post HECO Investment Agreement Execution, HECO Tolling Agreement Execution and Leased Property Equity Agreement Execution)	\$1.6MM BlueEarth Provided	Development Effort Funding ("DEF") to: - Conduct Site Testing and due diligence - Secure Permits and Land Entitlement and 'Permit to Construct' - Secure necessary debt and bond financing - Complete detailed Engineering and Project Costing - Construction Contracting - Secure Feed-stock supply Agreements - Negotiate Off-take agreements with HECO - Lobbying and Public Relations as required - Required Legal work - Debt and Guarantee Final Fees and Closing Costs

Project Timing	Funds Required	Type and Use of Funds
January 2008- January 2009 (Milestones)	\$59MM Debt, Bond and In- Kind (Leased Property Equity) Infusion	Construction and Working Capital to; - Procure Plant Assets - Project Management - Construction Management - Plant Construction - Procure Feed-stocks - Staff and Train Personnel - Commence Operations

The income generated by the Project will be allocated and distributed to each Party¹ as follows:

Project LTV Goal	HUS Project Ownership %	BlueEarth Project Ownership %
89%	49.8%	50.2%

The specifics of the equity allocation will be further detailed in the formal Investment Agreement ("IA") to be negotiated and agreed upon between the Parties with an anticipated execution date in March 2007. The underlying equity ownership premise is based on; 1.) \$61MM Project Capital Cost, 2.) \$3.9MM MECO Wa'ena site Land Appraisal as also reflected in the Leased Property Equity Agreement, \$400k HECO up-front cash investment, BlueEarth \$2MM upfront investment, and 89% LTV debt financing. Should these ownership assumptions change (e.g., changes in equity infusions, application of accounting standards and requirements, or other changed circumstances), then the Investment Agreement shall reflect the revised investment, debt and ownership percentages.

IN NO CASE WILL HECO or HUS BE ASKED OR REQUIRED TO CONTRIBUTE MORE THAN THEIR INTIAL \$400K UPFRONT INVESTMENT TO THE DEVELOPMENT EFFORT OF THE PROJECT. ANY ADDITIONAL DEVELOPMENT EFFORT FUNDS REQUIRED BY THE PROJECT WILL BE THE RESPONSIBILITY OF BLUEEARTH.

It is understood by the Parties that the Project and Newco contemplated by this MOU is a for profit entity. This entity is expected to generate income annually which will be distributed on a basis reflecting ownership percentages and free cash flows after appropriate reserves for capital expenditures, debt retirement, etc.

¹ The Newco Board of Directors membership shall be proportional to Project ownership percentages
HUS BlueEarth Maui Biodiesel Project MOU

Initials LM
Initials RE
Initials SM

MUTUAL RESPONSIBILITIES:

The Parties agree that they will:

1. Negotiate exclusively with each other in good faith to develop the Investment Agreement (IA), or its equivalent, stating the conditions under which each Party would participate and/or invest in Newco and be credited for its respective contributions (cash, services and in-kind) to the Project. The IA will be subject to the approval by the HEI and HECO Board of Directors and the State of Hawaii Public Utilities Commission ("PUC").
2. Work exclusively and in good faith with each other to develop the Maui Wae'na site biodiesel Project concept in preparation for the HI PUC's approval of concept and agreements.
3. Work exclusively and in good faith with each other to negotiate and expedite an acceptable tolling arrangement and leased property equity agreement between Newco and HUS.

HUS RESPONSIBILITIES:

The Parties agree that HUS will:

1. Review and evaluate the Project proposal, and satisfactorily complete any further due diligence required by HUS;
2. With support from its affiliates, provide Newco with early stage Project evaluation and development assistance, specifically in the areas of site evaluation and assessment, landowner relations (including obtaining site access rights, resource evaluation, environmental and permit approvals, right of ways as required, community and government relations activities, staff support and technical input);
3. Provide Newco with access to relevant proprietary utility information, subject to appropriate confidentiality agreements, if approved by utility management, and pursuant to the rules of the HUS-HECO-MECO conflict screen guidelines; and
4. Fund Due Diligence efforts (to be performed by BlueEarth) of \$400K upon signing of this document, in accordance with the "Project Investment, Ownership and Timing Understandings" presented on page 2 of this document. These funds will be placed into an Escrow account which will be released to BlueEarth upon BlueEarth having expended \$300k in development funds and having provided HUS with an acceptable accounting of such expenditure as well as with cash flows, plans and other documentation acceptable to HUS evidencing future cash flow requirements. The HUS funds will be used to cover the cash flow requirements (engineering, permitting, consulting, legal and financing) anticipated prior to HI PUC approval of the Investment Agreement, Tolling Agreement, and the Leased Property Equity Agreement, and any other required PUC approvals. Newco will be formed at the time of the Investment Agreement execution. The development funds expended by both parties at the time of Newco formation will be accounted for as equity contributions and credited in the initial capital structure of Newco
5. Make an additional equity investment in Newco (in the form of long-term land access/usage at the Wa'ena site), subject to the final review of Project financials and attainment of all stated conditions and in accordance with the investment and equity

limits agreed upon in the Investment Agreement, and full approval of the Hawaii Public Utilities Commission.

6. Retain and additionally fund any 3rd Party negotiations oversight service required for the Land Lease negotiations between MECO and HUS, and Off-take and Leased Property Equity negotiations between HUS and the Newco.
7. Establish the Biofuels Public Trust Entity contemplated by HECO.
8. Form an unregulated subsidiary to negotiate and be the lessee on the land lease with MECO.
9. Negotiate the Leased Property Equity Agreement with BlueEarth

BLUEEARTH RESPONSIBILITIES:

The Parties agree that BlueEarth will:

1. Have primary responsibility for establishing Newco (Investment Agreement, Tolling Agreement and Leased Property Equity Agreement by the Parties);
2. Prepare and approve the Project development plans and schedules, after consultation with HUS and MECO;
3. Manage and account for the upfront BlueEarth Project Due Diligence Funding of \$400K (plus HUS's contribution to Due Diligence of \$400K). These dollars will fund the Due Diligence efforts through April 15th, 2007 (or date of agreement on Leased Property Equity Agreement and Tolling/Offtake Agreement between NEWCO and HECO);
4. Fund the DEF Investment of \$1.6MM upon agreement on Leased Property Equity and Tolling Agreement between NEWCO and HECO;
5. Fund any additional DEF Investment that may be necessary (beyond the estimated \$1.6MM) in exchange for additional equity in the Project.
6. Manage the DEF efforts;
7. Conduct 3rd party resource monitoring and evaluation;
8. Obtain, on behalf of Newco, all required permits, land rights, and approvals;
9. Execute, on behalf of Newco, long-term feedstock resource and delivery contracts;
10. Independently negotiate and execute, on behalf of Newco, the Tolling Agreement with HECO, to be approved by the HI PUC, for the delivery of a guaranteed minimum annual production of biofuels blend; and
11. Negotiate the investment documents, as stated above; and
12. Negotiate the Construction and Engineering Contracts; and
13. Arrange and procure the necessary debt financing to complete the project in consultation with HUS; and
14. Provide Construction, Start-up and Life-cycle Plant Management.

OTHER:

1. This MOU may be amended at any time by mutual written agreement of the Parties. It shall expire twenty-four (24) months from the effective date unless extended or earlier terminated by mutual written agreement of the Parties, or terminated as set forth herein.

2. In the event that either Party determines that Project evaluation does not support continuation of the Project, either Party may terminate this MOU upon forty-five (45) days written

notice to the other Party and neither Party shall have any further obligation to the other, except pursuant to any confidentiality agreements between the parties.

3. The point of contact for any notice provided to the Parties under this MOU shall be:

For HECO:

Karl Stahlkopf
P. O. Box 2750
Honolulu, HI 96840-0001
Phone: 808-543-7655.
Fax: 808-543-7657
E-mail: kstahlkopf@heco.com

For MECO:

Ed Reinhardt
P.O. Box 398
Kahului, HI 96733-6898
Phone: 808-871-2300
Fax: 808-871-871-2350
E-mail: EReinhar@maulelectric.com

For BlueEarth:

Landis Maez
1088 Bishop Street, Suite 4100
Honolulu, HI 96813
Phone: (808) 388-5433
Fax: (808) 388-5433
E-mail: Landis.Maez@BlueEarthBiofuels.com

4. In the course of the Project, each Party may provide certain confidential information to the other Party about its system, operations and business plans. The recipient will hold such confidential information in confidence and shall not disclose it to any other Party without the disclosing Party's prior written approval in accordance with the terms and conditions of the confidentiality agreement between the parties with respect to the Project. This MOU does not in any way alter, amend or negate the obligations of the Parties under such confidentiality agreement between the Parties, and the terms of any such agreement shall remain in full force and effect in accordance with such agreement.

5. The Parties understand and agree that any definitive binding agreement between the Parties with respect to the Project will be subject to any notice or approvals that may be required by the HI PUC.

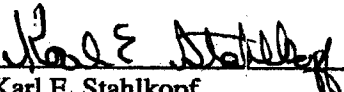
6. This MOU shall be governed by, construed and applied in accordance with the laws of the State of Hawaii.

Initials Landis Maez
Initials Ed Reinhardt
Initials _____

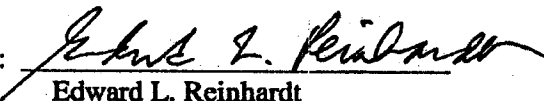
7. This MOU constitutes the entire understanding between the parties, superseding any and all previous understandings, oral or written, pertaining to the subject matter contained herein. The Parties have entered into this MOU in reliance upon the representations and mutual undertakings contained herein and not in reliance upon any oral or written representation or information provided to one Party by any representative of the other party. No Party shall claim at any time that it entered into this MOU in whole or in part based on any representation not stated in this MOU.

In WITNESS WHEREOF, the parties hereto, hereby execute this Memorandum of Understanding.

HAWAIIAN ELECTRIC COMPANY, INC.

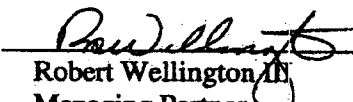
By: 
Karl E. Stahlkopf
Sr. Vice President

MAUI ELECTRIC COMPANY, LTD.

By: 
Edward L. Reinhardt
President

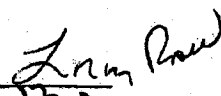
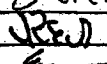
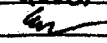
BLUEEARTH BIOFUELS, LLC

By: 
Landis R. Maez
Managing Partner

By: 
Robert Wellington III
Managing Partner

HUS BlueEarth Maui Biodiesel Project MOU

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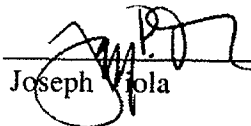
App. 12

App. 13

Hawai'i law. See Exhibit "A," which is a true and correct copy of the operative agreement; the choice of law provision is Paragraph 14.6. Similarly, Vignette provides software which HECO and MECO use in Hawai'i under a master licensing agreement governed by Hawai'i law. See Exhibit "B," which is a true and correct copy of the operative agreement between HECO and Vignette; the choice of law provision is Paragraph 11(h). The references to the controlling effect of Hawai'i law are highlighted in both agreements.

3. HECO and its subsidiary Renewable Hawai'i Inc are parties to several agreements with Shell WindEnergy Services, Inc. Those agreements relate to exploration of possible wind and renewable energy projects in Hawai'i. MECO is a party to one confidentiality agreement with Shell WindEnergy Inc. to explore possible wind and renewable energy projects in Hawai'i. As far as I am aware, after inquiry, neither HECO, MECO nor RHI presently have entered into any contracts to actually develop any wind or renewable energy projects in Hawai'i.

I declare that the foregoing is true under penalty of perjury under the law of the United States.



Joseph Viola

CSMA NO: MSTR-JB-05-02

CONSULTANT SERVICES MASTER AGREEMENT

THIS CONSULTANT SERVICES MASTER AGREEMENT (the "Master Agreement") is made on February 9, 2005, by and between HAWAIIAN ELECTRIC COMPANY, INC. (hereinafter "Company"), a Hawaii corporation, whose principal place of business and address is 900 Richards Street, Honolulu, Hawaii 96813, and whose mailing address is P. O. Box 2750, Honolulu, Hawaii 96840-0001, and **JIM CLARY & ASSOCIATES, INC.** (hereinafter "Consultant"), whose principal place of business is 5001 LBJ Freeway, Suite 800, Dallas, Texas 75244, and whose mailing address is, the same, doing business in Hawaii.

W I T N E S S E I H :

WHEREAS, Company is in the business of generation, transmission, and distribution of electrical power on the Island of Oahu, State of Hawaii; and

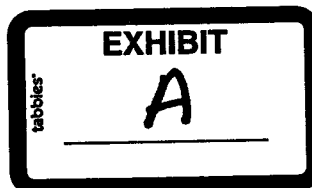
WHEREAS, Company is in the business of generation, transmission, and distribution of electrical power on the Islands of Maui, Lanai and Molokai, State of Hawaii; and

WHEREAS, Company requires certain professional consulting work to be accomplished from time to time in order to maintain reliable electrical power for its customers; and

WHEREAS, Consultant is in the business of performing professional consulting work such as that needed by Company; and

WHEREAS, Consultant represents that it is equipped and has the expertise necessary to perform the particular professional consulting work required under this Master Agreement,

NOW, THEREFORE, in consideration of these premises and of the mutual promises herein contained, Company and Consultant hereby agree that Consultant will perform professional consulting work for Company under the following terms and conditions:



I. APPLICATION OF THE MASTER AGREEMENT

1.1 Purpose. The purpose of this Master Agreement is to set forth the terms, conditions and administrative procedures applicable to the services or work provided by Consultant for or on behalf of the Company under specific Work Authorizations provided for hereunder.

1.2 Term of Master Agreement - This Master Agreement shall terminate on **February 9, 2008**, provided however, that said Master Agreement shall continue to be effective as to any outstanding Work under a Work Authorization issued prior to that date.

II. SPECIFIC CONTRACTS

2.1 Request for Quote - During the term of this Master Agreement, the Company may from time to time issue a Request for Quote in the form of Attachment A, Section I for certain services or Work to be performed by Consultant under the terms and conditions contained herein.

2.2 Consultant's Proposal - If Consultant desires to do the requested Work, it will fill out Section II of Attachment A, and propose a price or price structure for the Work. Such a price quote shall constitute an affirmative representation by Consultant that it is equipped and has the expertise necessary to perform the Work requested in the Request for Quote.

2.3 Work Authorization - If Company desires to have the Work done by Consultant, it will issue a Work Authorization by executing Section III of Attachment A.

2.4 Specific Contract - Each executed Work Authorization shall constitute a specific contract, which shall be governed by the particular Work Authorization terms and this Master Agreement. In addition, Company's request for Work under a Verbal Work Authorization and the start of Work thereunder by Consultant shall also constitute a specific contract and all Work thereby performed shall be governed by the terms and conditions of this Master Agreement.

2.5 Authority to Issue - The following are the only individuals authorized to sign Section III of Attachment A and thereby issue Work Authorizations hereunder and may do so only up to the stated limits for each Work Authorization:

Senior Environmental Scientist	Up to \$5000.00
Principal Environmental Scientist	Up to \$25,000.00
Department Manager	Up to \$50,000.00
Process Area Vice President	Up to \$250,000.00
Two Vice Presidents	Greater than \$250,000.00

2.6 Verbal Work Authorizations - In emergency or other similar time-critical situations, Work may be authorized by Company under a verbal Work Authorization

from an individual listed in Section 2.5 above; provided that a written Work Authorization (Attachment A) is completed for such Work within 24 hours of the start of such Work; and, provided further, that Consultant invoices Company no more than the amount it would charge its best customer for the same Work.

III. SCOPE OF WORK

3.1 Work Description - Consultant agrees to furnish all labor, tools, materials, equipment, transportation, and supervision necessary to complete the work and tasks described in Section I of each executed Work Authorization ("Work").

3.2 Schedule of Work - The Work in each Work Authorization shall start and be completed as provided therein.

3.3 Change of Scope - In the event Company desires to revise the scope of the Work, Company will initiate an Amendment to Authorization, Attachment B. Consultant will in turn fill in Consultant's proposed not-to-exceed price for the revised scope and if Company accepts the proposed change in price, then both parties will sign and execute the Amendment which will become part of the Work.

IV. COMPENSATION

4.1 Price - Compensation for Work performed and expenses incurred under each Work Authorization shall be as set forth in such Work Authorization.

4.2 Invoicing - For each Work Authorization, Consultant will submit its invoice for all Work rendered as set forth therein or on a monthly basis (the "billing period"). Such invoice shall be in a form approved by Company and shall at a minimum show (i) the total hours of Work for the applicable billing period by each Consultant employee; (ii) the hourly rate for each Consultant employee; (iii) a description of the Work performed; and (iv) an itemized list of all allowable expenditures made during the month. Upon request by Company, Consultant shall provide supporting documentation, including but not limited to invoices and receipts, as evidence of such expenditures. The invoice shall reference the Company's Designated Representative, Company's purchase order number or Service Contract number, if any, Contract Number, Work Authorization Number and any additional information required as part of the Scope of Work hereunder. All invoices should be addressed:

Hawaiian Electric Company, Inc.

P. O. Box 2750

Honolulu, Hawaii 96840-0001

Attention: Accounts Payable

Service Order No. _____

Service Contract No. _____

NOTE: Do not include the name of the Company's Designated Representative in the address.

The ORIGINAL invoice, without attachments, must be sent directly to the Accounts Payable address listed above. ALL REQUIRED SUPPORTING DOCUMENTATION must be sent SEPARATELY to the Company's Designated Representative. Failure to follow this procedure may cause a delay in payment.

4.3 Payments - Payment of a properly submitted invoice will be made within thirty (30) days after receipt and approval by Company.

4.4 Final Payment - Final payment of all remaining amounts due Consultant under a particular Work Authorization, including any retention, shall be made within sixty (60) days after all Work is completed, accepted by Company, and a proper final invoice submitted; provided, however, that payment shall be made within thirty (30) days if Company is satisfied by bond or otherwise that there are no outstanding claims against the Work.

4.5 Withholding of Payments; Set-off - All payments, including the final payment, are subject to adjustment during or after termination of the Work on the basis of any final accounting which may be made by Company. Company may withhold from any payment, including the final payment: (1) any amount incorrectly invoiced; (2) any amount in dispute either because Company has found the invoice excessive, or the Work performed unacceptable; or (3) an amount sufficient to completely protect Company from any loss, damage or expense arising out of assertions by other parties of any claim or lien against Company because of Consultant's performance of a Work Authorization. Company further reserves the right to set-off any amounts due from Consultant, or any affiliated company of Consultant, to Company against any amounts payable at any time by Company in connection with this Agreement. "Affiliated company" refers to any corporation, firm or association which controls, is controlled by or is under common control with Consultant.

V. STATUS OF THE PARTIES

5.1 Independent Contractor - Consultant will act solely as an independent contractor of Company, and not as Company's agent or servant for any purpose. All employees of Consultant will work under the supervision of Consultant and not act as Company's agents or servants for any purpose.

5.2 Subletting or Assigning Contract - Consultant shall not assign nor sublet any portion of the Work under a Work Authorization without first submitting the proposed subcontract or assignment to Company's Designated Representative and receiving written consent from such Representative to subcontract or assign, which consent may be granted or withheld in Company's sole discretion. A request to sublet

or assign must contain the name and location of individuals or firms to whom Work will be transferred, information on the qualifications and experience of those individuals or firms to perform the transferred Work, and an estimate of the cost of Work to be performed by the subcontractor or assignee. The general terms and conditions of this Master Agreement and any amendment regarding the Work to be performed must be incorporated into and attached to any subcontract or assignment. Consent to subletting or assignment will not relieve Consultant of responsibility for the performance of the Work in accordance with the terms and conditions of the Work Authorization in question, and any amendments thereto.

VI. POINTS OF CONTACT

6.1 Company's Designated Representative - A "Company's Designated Representative" shall be appointed for each Work Authorization. Such Representative shall be the point of contact for and have the authority to speak on behalf of Company concerning all matters related to the Work Authorization, except that he shall not have the authority to amend this Master Agreement or the Work Authorization.

6.2 Consultant's Designated Representative - A "Consultant's Designated Representative" shall be appointed for each Work Authorization. Such Representative shall be the point of contact for and have the authority to speak on behalf of Consultant concerning all matters related to the Work Authorization, except that he shall not have the authority to amend this Master Agreement or the Work Authorization.

VII. PERFORMANCE STANDARDS

7.1 Performance Standards - In selecting employees to undertake the Work under a Work Authorization, Consultant shall select only those persons who are qualified by the necessary education, training and experience to provide high quality performance of the particular Work for which each such employee is responsible. Consultant shall accomplish all Work in a professional manner and to the reasonable satisfaction of Company. Consultant's personnel shall exercise that degree of skill and care required in accordance with the generally accepted standards for such Work in Consultant's field, and shall indemnify and hold Company harmless from any loss, including but not limited to reasonable attorneys' fees and costs, incurred by Company as a result of the professional acts, errors or omissions of Consultant or any of Consultant's personnel.

7.2 Technological Developments and Remedies - Consultant shall promptly advise Company of all reasonably available technological advances and remedies which are known or become known to Consultant over the course of performance of its obligations under each relevant Work Authorization issued under this Agreement and up to the conclusion of the Work which may result in the Work having added value (i.e. better performance, design, material, longer useful life, etc.) to Company. Should Company elect to incorporate such advances it shall do so pursuant to a Change Order mutually agreeable to the parties.

7.3 Correction of Defective or Substandard Work - Consultant acknowledges its absolute responsibility for insuring that the procedures used in the performance of each Work Authorization are sufficient to satisfactorily accomplish the Work, and that review and approval by Company of any drawings, specifications or other documents prepared by Consultant in the performance of the Work shall not relieve Consultant or any of its subcontractors or vendors of its professional responsibility for the Work. Consultant agrees that it shall promptly correct without expense to Company all Work which is not completed to the reasonable satisfaction of Company or which does not meet the performance standards established herein. Consultant shall make such corrections of defective Work upon written notice thereof anytime such defects appear within one (1) year of Company's acceptance of the Work performed hereunder, or other discovery period as specified in the Work Authorizations, even after termination of this Master Agreement.

7.4 Right to Reject - Due to the critical nature of Company's operations, Consultant agrees that if Company, in its sole discretion and after reasonable consultation with Consultant, determines that any Consultant employee provided under a Work Authorization is unsuitable for the performance of the Work, or that the continued presence of such employee on Company property is not consistent with the best interests of Company, then in such an instance Company may request that Consultant remove such employee from the Work and Consultant shall forthwith comply with this request. Consultant will then immediately replace such employee with an employee who fully meets the standards under this Master Agreement and will do so at no cost to Company.

VIII. INSURANCE AND INDEMNITY

8.1 Workers' Compensation - Consultant and anyone acting under its direction or control or on its behalf shall at its own expense procure and maintain in full force at all times during the term of each Work Authorization, Workers' Compensation, Temporary Disability, and other similar insurance required by state or federal laws. In the event that Consultant fails to maintain such insurance as required by law, Consultant acknowledges and agrees that it will not seek or be entitled to any coverage under Owner's insurance. Permissible self-insurance will be acceptable subject to submission of a copy of appropriate governmental authorization and qualification by Consultant.

In addition, Consultant and anyone acting under its direction or control or on its behalf shall at its own expense procure and maintain in full force at all times during the term of each Work Authorization, Employers Liability insurance with minimum limits for bodily injury from accident of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) - each accident; for bodily injury from disease of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) - each employee; and for bodily injury from disease of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) - each policy limit; or other minimum limits as specified in the Work Authorizations.

If there is an exposure or injury to Consultant's employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or other laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

8.2 Commercial General Liability Insurance - Consultant and anyone acting under its direction or control or on its behalf shall at its own expense procure and maintain in full force at all times during the term of each Work Authorization, Commercial General Liability insurance with a bodily injury and property damage combined single limit of liability of at least TWO MILLION DOLLARS (\$2,000,000) or other minimum limits as specified in the Work Authorizations for any occurrence. Such insurance will include coverage in like amount for products/completed operations, contractual liability, and personal and advertising injury. "Claims made" policies are not acceptable under this Section 8.2.

8.3 Automobile Liability Insurance - Consultant and anyone acting under its direction or control or on its behalf shall at its own expense procure and maintain in full effect at all times during the term of each Work Authorization, Automobile Liability insurance with a bodily injury and property damage combined single limit of at least ONE MILLION DOLLARS (\$1,000,000) or other minimum limits as specified in the Work Authorizations per accident.

8.4 Consultant's Pollution Liability Insurance and/or Asbestos Abatement Liability Insurance and/or Lead Abatement Liability Insurance - In the event that Company so specifies or as Consultant may determine based upon Consultant's assessment of the Work, if the Work involves Pollution Cleanup Services, Asbestos Abatement and/or Lead Abatement, the Consultant shall provide proof of insurance coverage as applicable with a combined single limit of at least ONE MILLION DOLLARS (\$1,000,000) per occurrence or other minimum limits as specified in the Work Authorizations.

8.5 Marine Insurance - If Consultant and anyone acting under its direction or control or on its behalf charters a marine vessel for performance during the term of each Work Authorization, Consultant shall first provide to the Company proof of Charterers Legal Liability Insurance to be in effect during the term of the charter and insuring liabilities arising out of charter agreements on form CL 345 N/E or equivalent, with limits of liability of at least FIVE MILLION DOLLARS (\$5,000,000) or other minimum limits as specified in the Work Authorizations.

8.6 Waiver of Subrogation - Consultant and anyone acting under its direction will cause its insurers (except for Workers' Compensation and Professional Errors and Omissions insurance) to waive all rights of subrogation which Consultant or its insurers may have against Company, Company's agents, or Company's employees.

8.7 Company as Additional Insured - Insurance policies (except Workers' Compensation, Automobile Liability, and Professional Errors and Omissions) providing the insurance coverage required in this Article will name Company, Company's agents, and/or Company's employees as an additional insured, as appropriate. Coverage must

be primary in respect to the additional insured. Any other insurance carried by the Company will be excess only and not contribute with this insurance.

8.8 Certificates of Insurance - Within ten (10) days of the date of each Work Authorization, Consultant shall file with the Company's Designated Representative certificates of insurance certifying that each of the foregoing insurance coverages is in force, and further providing that the Company will be given thirty (30) days' written notice of any material change in, cancellation of, or intent not to renew any of the policies. Receipt of any certificate showing less coverage than requested is not a waiver of the Consultant's obligation to fulfill the requirements.

8.9 Indemnity - Consultant and anyone acting under its direction or control or on its behalf shall indemnify, defend and hold harmless Company from and against all losses, damages, claims and actions, including but not limited to reasonable attorneys' fees and costs, and all expenses incidental to such losses, damages, claims or actions, based upon or arising out of damage to property or injuries to persons, or other tortious acts caused or contributed to by the negligence, gross negligence, willful misconduct or omission of the Consultant or anyone acting under its direction or control or in its behalf in the course of its performance under each Work Authorization; provided Consultant's aforesaid indemnity and hold harmless obligation shall not be applicable to any liability based upon the sole negligence, gross negligence or willful misconduct of Company, and provided further that Consultant's indemnity and hold harmless obligation pursuant to this paragraph shall not be applicable to any liability based upon the professional acts, errors or omissions of Consultant.

IX. OWNERSHIP OF MATERIALS, INFORMATION, COPYRIGHTS AND DISCOVERIES

9.1 Ownership of Materials. Except as otherwise provided, any and all drawings, specifications, technical information and business information of any type whatsoever, whether or not characterized as secret or confidential obtained under this Agreement or related to the Work, whether received or disclosed by written or oral communication or otherwise, including all documents, materials and information prepared or developed by Consultant in the performance of this Agreement (except as provided below), are Company's exclusive property and shall be deemed Company's confidential information and Consultant shall receive and maintain the same in the strictest confidence. Consultant shall not use such materials or information for any purpose other than for purposes of quotation or performance under this Agreement, and shall not otherwise disclose such materials or information to others except with the Company's consent given in writing. Consultant shall return all copies of all materials relating to the Work to Company upon completion of the Work.

9.2 Excluded Materials and Information. Consultant shall have no obligation to maintain in confidence any information that is now generally known in the industry or was previously in Consultant's possession or custody and not obtained from Company, or received from third parties, as evidenced by satisfactorily dated and authenticated documentary evidence (such as dated publications, dated and publicly distributed catalogs, dated manufacturing specifications, and dated, witnessed, and regularly kept

laboratory notebooks) furnished to Company within fifteen (15) days of the execution of this Agreement and acknowledged in writing by Company.

9.3 Discoveries and Inventions. Consultant agrees that all ideas, creations, inventions, discoveries and improvements, whether or not patentable or copyrightable and whether or not fixed in any mode of expression or reduced to practice (collectively referred to as "Discoveries") which Consultant conceives of, alone or jointly with others, or which are suggested by or result from any Work performed under this Agreement, or which relate to the actual or anticipated business of Company, or the actual or anticipated research and development of Company, or which result from the use of Company facilities, equipment, supplies, or information, are also the sole and exclusive property of Company, and Company shall have the right to use such Discoveries and to obtain patent, copyright, and/or trade secret protection or any other form of legal protection for such Discoveries. Consultant shall disclose promptly in writing to Company all Discoveries made or conceived as a result of Work performed under this Agreement.

9.4 Assignment of Copyright and Discoveries. Consultant agrees to assist Company in every way (at Company's expense) to obtain, and from time to time to enforce its legal rights to such Discoveries in the United States or other countries.

Consultant agrees to execute at Company's request, for no additional compensation, all assignments of rights and other documents necessary to confirm ownership by Company of such copyrights or Discoveries and to obtain patents, copyrights and any other forms of legal protection. All copies of all such information and materials relating to the Work must be returned to Company and all necessary assignments executed by Consultant before final payment will be made by Company.

9.5 Previous Discoveries. Sections 9.3 and 9.4 shall not apply to Discoveries made or conceived of and set forth in a tangible medium of expression by Consultant prior to the execution of this Agreement. Consultant agrees to provide Company with satisfactory written evidence or documentation of any such Previous Discoveries upon Company's request.

9.6 Term of Confidentiality. This requirement under Section IX shall remain in effect for as long as such material, information or Discoveries have not become generally known in the industry without the Company's fault or negligence. This requirement shall survive the expiration or termination of this or any other agreement between the Company and the Consultant whether now or hereafter executed.

X. TERMINATION FOR CAUSE

10.1 Conditions Allowing Termination - If any of the following conditions occur during the term of this Master Agreement, then in such case, Company shall have the right to terminate the Master Agreement and all Work Authorizations thereunder as provided in this Article:

- (a) Consultant fails or is unable to perform its obligations under the Master Agreement or a Work Authorization to the reasonable satisfaction of Company;
- (b) Consultant becomes involved in a labor problem which in the opinion of Company unacceptably impedes or slows down Work under a Work Authorization;
- (c) Consultant fails to commence correction of defective Work immediately after notification of defect and to continuously and vigorously pursue correction of defect until the Work is completed to the full satisfaction of Company;
- (d) Consultant makes a general assignment for the benefit of its creditors;
- (e) Consultant has a receiver appointed because of insolvency; or
- (f) Consultant files bankruptcy or has a petition for involuntary bankruptcy filed against it.

Termination of this Master Agreement shall automatically result in termination of all outstanding Work Authorizations.

10.2 Notice Required Before Termination - Before terminating a Work Authorization or the Master Agreement for cause, Company shall give written notice to Consultant of the existence of one of the above conditions allowing termination for cause and of Company's intention to exercise its termination rights if the condition is not corrected to the satisfaction of Company within fifteen (15) days of such notice.

10.3 Consultant's Right to Correct Condition - Upon receipt of Company's notice of intent to terminate for cause, Consultant shall have fifteen (15) days in which to correct the noted condition to the satisfaction of Company, or, if appropriate, to provide substitute Work which meets all the requirements of the applicable Work Authorization and the Master Agreement.

10.4 Company's Rights Upon Termination - If Consultant fails to correct the noted condition within fifteen (15) days, Company may terminate the Work Authorization or the Master Agreement, or both and secure such substitute Work as it deems necessary to complete the Work under the Work Authorization. In the event Company acquires substitute Work under this provision, Consultant agrees to pay Company upon demand, the difference between what the substitute Work actually costs Company and what Consultant would have been paid had it completed the Work itself. This provision shall survive termination of each Work Authorization and the Master Agreement.

XI. TERMINATION FOR CONVENIENCE

11.1 Company's Rights - Notwithstanding Article X above, Company shall have the right to terminate a Work Authorization or the Master Agreement or both at any time for Company's convenience, which shall include any reason or no reason at all, by giving written notice of such to Consultant. Termination of the Master Agreement shall automatically result in termination of all outstanding Work Authorizations. Upon receiving notice of termination, Consultant shall discontinue the Work on the date and to the extent specified in the notice and place no further orders for services except as needed to continue any portion of the Work which was not terminated. Consultant shall also make every reasonable effort to cancel, upon terms satisfactory to Company, all orders or subcontracts related to the terminated Work.

11.2 Termination Prior to Commencement of Work - If a Work Authorization or the Master Agreement is terminated prior to Consultant's having commenced any Work or preparation for Work, no payment shall be made to Consultant.

11.3 Termination After Commencement of Work - If a Work Authorization or the Master Agreement is terminated for Company's convenience after Consultant has commenced any Work, mobilization or other off-site activities under a Work Authorization, Consultant will be paid its actually incurred costs, including administrative and general overhead costs and demobilization costs, determined in accordance with generally accepted accounting principles consistently applied, plus an amount equal to ten percent (10%) of those costs to account for profit; provided that, if compensation under a Work Authorization is on a time and materials basis, Consultant will be compensated at the rates and profit level specified in the Work Authorization for Work actually accomplished prior to the notice of termination. Notwithstanding the above, Company shall not pay for time, and/or costs which, as determined solely in Company's reasonable discretion, are excessive, given the total Work actually completed prior to notice of termination.

11.4 Consultant's Duty to Mitigate - Consultant agrees that it has an affirmative duty to mitigate all damages to it upon termination of a Work Authorization or the Master Agreement for convenience of Company.

XII. FORCE MAJEURE

12.1 Excuse of Performance - Notwithstanding anything in this Master Agreement to the contrary, neither party shall be liable nor responsible for failure to carry out any of its obligations under a Work Authorization caused by Force Majeure. A party rendered unable to fulfill any obligation under this Master Agreement by reason of Force Majeure shall make reasonable efforts to remove such inability in the shortest possible time, and the other party shall be excused from performance of its obligations until the party relying on the Force Majeure shall again be in full compliance with its obligations under the Master Agreement and the affected Work Authorization thereunder.

12.2 Definition - The term "Force Majeure" as used herein shall mean any cause beyond the control of the party affected, and which by reasonable efforts the party affected is unable to overcome, including without limitation the following: acts of God; fire, flood, landslide, lightning, earthquake, hurricane, tornado, storm, freeze, volcanic eruption or drought; blight, famine, epidemic or quarantine; act or failure to act of the other party; theft; casualty; war; invasion; civil disturbance; explosion; acts of public enemies; or sabotage.

XIII. LAWS, REGULATIONS AND PUBLIC ORDINANCES

13.1 Compliance - Consultant shall comply with federal, state, and local statutes, regulations and public ordinances of any nature governing the Work, including without limitation, those statutes specifically referred to in this Article. In addition, Consultant, at its expense, shall obtain any and all licenses and permits required for the performance of the Work. Consultant shall indemnify and defend Company from any liability, fines, damages, costs, or expenses, including but not limited to reasonable attorneys' fees and costs, arising from Consultant's failure to comply with this Article.

13.2 Taxes - Consultant assumes exclusive liability for all contributions, taxes or payments required to be made because of persons hired, employed or paid by Consultant by the federal and state Unemployment Compensation Act, Social Security Acts and all amendments, and by all other current or future acts, federal or state, requiring payment by the Consultant on account of the person hired, employed, or paid by Consultant for Work performed under this Master Agreement. Sales, use and excise taxes applicable to the value or use of any property incorporated, furnished, or otherwise supplied by Consultant shall be stated separately from the price or rates specified in Article IV (COMPENSATION), and shall not be included in any computation of profit allowed by this Contract. Consultant assumes exclusive liability for all such taxes charged or chargeable upon any such goods or materials supplied by Consultant pursuant to each Specific Work Authorization.

13.3 Safety and Health Regulations - Consultant shall comply with all federal, state and local laws and regulations pertaining to health, safety, sanitary facilities, and waste disposal. Consultant shall meet all requirements of the Occupational Safety and Health Act of 1970 (OSHA) including all amendments. Consultant shall also comply with any standards, rules, regulations and orders promulgated under OSHA and particularly with the agreement for State development and enforcement of Occupational Health and Safety Standards as authorized by Section 18 of the Act.

13.4 Equal Employment Opportunity - (Applicable to all contracts of \$10,000 or more in the whole or aggregate. 41 CFR 60-1.4 and 41 CFR 60-741.5(a).) Consultant is aware of and is fully informed of Contractor responsibilities under Executive Order 11246 (reference to which include amendments and orders superseding in whole or in part) and shall be bound by and agrees to the provisions as contained in Section 202 of said Executive Order and the Equal Opportunity Clause as set forth in 41 CFR 60-1.4 and 41 CFR 60-741.5(a), which clauses are hereby incorporated by reference.

13.5 Employment of Disabled Veterans and Veterans of the Vietnam Era - (Applicable to all contracts of \$10,000 or more in the whole or in the aggregate. 41 CFR 60-250.4 and 41 CFR 60-741.5.) Consultant agrees that it is and will remain in compliance with the rules and regulations promulgated under The Vietnam Era Veterans Readjustment Assistance Act of 1974, The Affirmative Action Clause set forth in 41 CFR 60-250.4, the Rehabilitation Act of 1973 and the Equal Opportunity Clause set forth in 41 CFR 60-741.5 which clauses are incorporated by reference herein.

13.6 Drawings and Specifications - It is the intent of Company to have all drawings and specifications for the Work comply with all applicable statutes, regulations, general orders of the State of Hawaii, Company Tariff and ordinances. If Consultant discovers any discrepancy or conflict between the drawings and specifications and applicable legal requirements, Consultant shall immediately report the problem in writing to Company's Designated Representative for the applicable Work Authorization.

XIV. MISCELLANEOUS

14.1 Patents and Copyrights - Consultant agrees that in performing Work under each Work Authorization, it will not use any process, program, design, device, or material which infringes on any United States patent or copyright or any trade secret agreement. Consultant agrees to indemnify, defend and hold harmless Company from and against all losses, damages, claims, fees and costs, including but not limited to reasonable attorneys' fees and costs, arising from or incidental to any suit or proceeding brought against Company for patent, copyright, or trade secret infringement arising out of Consultant's Work. Company shall promptly notify Consultant of any such suit or proceeding and shall assist Consultant in defending the action by providing any necessary information.

14.2 Security - Consultant and Consultant's employees who perform Work under each Work Authorization shall comply with the security practices and procedures prescribed by Company to cover any Company property where Work may be performed. Consultant shall advise its employees of these practices and procedures and secure their consent to abide by these procedures. Company will make a copy of these practices and procedures available to Consultant upon request.

14.3 Amendments - This Master Agreement and any Work Authorization thereunder may be amended or supplemented by and only by written instrument duly executed by each of the parties.

14.4 Severability of Provisions - In the event a court or other tribunal of competent jurisdiction at any time holds that any provision of this Master Agreement is invalid, the remainder of this Master Agreement shall not be affected thereby and shall continue in full force and effect.

14.5 Entire Agreement - This Master Agreement and any executed Work Authorization thereunder shall constitute the entire understanding between the parties,

superseding any and all previous understandings, oral or written, pertaining to the subject matter contained herein. The parties have entered into this Master Agreement in reliance upon the representations and mutual undertakings contained herein and not in reliance upon any oral or written representation or information provided to one party by any representative of the other party. Neither party shall claim at any time that it entered into this Master Agreement in whole or in part based on any representation not stated in this Master Agreement.

14.6 Applicable Law/Forum - This Master Agreement and all Work Authorizations thereunder are made under and shall be governed by and construed in accordance with the laws of the State of Hawaii. Each party agrees and consents that any dispute arising out of this Master Agreement, however defined, shall be brought in the State of Hawaii in a court of competent jurisdiction, provided, however, that Company, at its option, may elect to submit any such dispute to binding arbitration pursuant to the arbitration rules of the American Arbitration Association then in effect.

14.7 No Waiver - The failure at any time of either party to enforce any of the provisions of this Master Agreement or any Work Authorization, or to require at any time performance by the other party of any of the provisions thereof, shall in no way be construed to be a waiver of such provisions, nor in any way construed to affect the validity of this Master Agreement or any Work Authorization or any part hereof, or the right of any party thereafter to enforce each and every such provision.

14.8 Access to Records - Upon request, Consultant shall make available for inspection and audit by Company in Honolulu, Hawaii any and all records and/or documents relating to Work performed under this Master Agreement during the performance of the Work and for a period of up to two (2) years from the completion of all Work under a Work Authorization. The right to audit shall not extend to the derivation of overhead costs.

14.9 Regulatory Approvals - This Master Agreement shall be contingent upon any and all required governmental and regulatory approvals, including those of the Public Utilities Commission.

14.10 Gender and Number - The terms "Company" and "Consultant," as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine and neuter, the singular or plural number, individuals, partnerships, trustees or corporations and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context thereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein.

14.11 Attorneys' Fees and Costs - If Consultant's actions arising out of or relating to this Contract cause Company to retain counsel to assist it in resolving the matter in dispute or if Company is forced to pursue legal action against Consultant to

enforce the terms and conditions of this Contract, then Company shall be entitled to its attorneys' fees and costs incurred therein.

- 14.12 Survival of Obligations – All defense, hold harmless and indemnity obligations hereunder shall survive termination of this Agreement.

XV. COUNTERPARTS CLAUSE

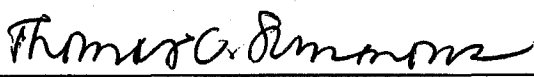
The parties agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same instrument binding all parties notwithstanding that all of the parties are not signatories to the same counterparts. For all purposes, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the parties hereto have caused this Master Agreement to be signed by appropriate representatives of each as of the date indicated.

HAWAIIAN ELECTRIC COMPANY, INC.
("Company")

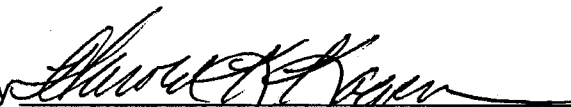
By 
Sherri-Ann Loo
Its Manager - Environmental

DATE: _____

By 
Thomas C. Simmons
Its Vice President – Power Supply

DATE: _____

DATE: _____

By 
 Harold K. Kageura
 Its Vice President - Energy Delivery

DATE: 04/05/2005

JIM CLARY & ASSOCIATES, INC.
 By 
 James C. Clary, Jr.
 Its President

MASTER CONTRACT NO. MSTR-PJB-05-02

WORK AUTHORIZATION NO. _____
 Under Service Contract No. PJ _____

(Project Name)

I. Request for Quote

Under the terms and conditions of the Consultant Services Master Agreement, dated _____, by and between _____. ("Consultant") and Hawaiian Electric Company, Inc. ("Company"), Company hereby requests a proposal from Consultant to perform the following Work:

Description/Scope of Work

Dated _____

	Name	Company
--	------	---------

The minimum insurance limits and warranty defect discovery period specified in the Consultant Services Master Agreement shall be modified for this Work Authorization only:

Warranty

Section 7.3 - _____ year discovery period for defects

Employers' Liability

Section 8.1 - \$ _____ per each accident
\$ _____ for bodily injury from disease -
each employee
\$ _____ for bodily injury from disease -
each policy limit

Commercial General Liability

Section 8.2 - \$_____ per occurrence
\$_____ general aggregate

Automobile Liability

Section 8.3 - \$ **per accident**

Professional Errors and Omissions

Section 8.4 - \$ _____ per each claim
\$ _____ per aggregate

Pollution Liability and/or Asbestos Abatement Liability and/or Lead Abatement Liability

Section 8.5 - \$ **per occurrence**

Marine

Section 8.6 - \$_____ per occurrence

II. Consultant's Proposal

Consultant hereby proposes to perform the Work described above in Section I,
under said terms and conditions, for the following
amount:

Total not-to-exceed cost is _____. Total not-to-exceed manhours required is _____.

Work will begin no later than _____ and be completed on or before _____.

_____ will act as Consultant's Designated Representative during the performance of this Work.

Dated: _____

Consultant

III. Work Authorization

Consultant's foregoing Proposal is accepted. Consultant is authorized to perform the Work as proposed. Company's Designated Representative for this Work Authorization shall be _____.

Dated: _____
_____ Company

Dated: _____
_____ Company

AMENDMENT NO. ____ TO AUTHORIZATION NO. _____
MASTER CONTRACT MSTR-PJB-05-02

UNDER PURCHASE ORDER NO. _____/CONTRACT NO. _____

Hawaiian Electric Company, Inc. (HECO) and _____
 (Consultant) agree to amend Authorization No. ____ of the Consultant Services Master
 Agreement No. _____, dated _____ as follows:

Previous total not-to-exceed amount \$ _____
 for Authorization No. ____

Total not-to-exceed cost for \$ _____
 Amendment No. ____ work

New total not-to-exceed amount for \$ _____
 Authorization No. ____

_____ is the designated HECO representative for this work.

Except as provided herein, the terms of said Agreement shall remain the same and are
 incorporated by reference herein.

Please sign both copies of this document and return both to Hawaiian Electric
 Company, Inc. We will endorse and return one copy to you for your files.

THE ABOVE AMENDMENT IS ACCEPTED BY:

HAWAIIAN ELECTRIC COMPANY, INC.

By: _____ By: _____

Title: _____ Title: _____

Date: _____ Date: _____

 By: _____

Title: _____

Date: _____

CORPORATE MASTER AGREEMENT

between

Vignette Corporation _____ Hawaiian Electric Company, Inc. _____
"Vignette" "Client"
a Delaware corporation _____ a Hawaii _____ corporation
901 South Mo Pac Expressway _____ and _____ 820 Ward Ave. _____
Building 3 _____ Street Address
Austin, Texas 78746-5776 _____ Honolulu, HI 96814 _____
City, State, Zip

This Corporate Master Agreement (this "Agreement"), effective August 31, 2000 (the "Effective Date"),

sets forth the terms and conditions under which the parties agree that Client may, pursuant to one or more separately executed Schedules, (i) obtain licenses to use (a) Vignette's proprietary, non-custom software (the "Programs") listed on the relevant Schedule(s), (b) Vignette-furnished proprietary, custom software (the "Custom Programs") provided pursuant to consulting services listed on the relevant Schedule(s) and (c) the user documentation (the "Documentation") that Vignette makes generally available in hard copy or electronic form to its general customer base in conjunction with licenses of the Programs, (ii) purchase the services listed on the relevant Schedules, and (iii) purchase the services (the "Services") listed on one or more separately executed Assignments of Work. In this Agreement, the term "Software" shall mean the Programs and/or the Custom Programs, along with the Documentation, as appropriate.

This Agreement shall consist of this Agreement Form, the attached Exhibits, and all executed Schedules, as well as all other referenced attachments and any amendments. This Agreement is effective only upon full execution by both parties. If Client is not a corporation or other legal entity formed in a state of the United States, the terms and conditions of Exhibit B attached hereto shall apply to this Agreement. By signing below, each party agrees to the terms of this Agreement. Any executed copy of this Agreement made by reliable means (e.g., photocopy or facsimile) is considered an original.

Agreed to by:

Vignette Corporation

By: _____

(Signature)

ROBERT R. ROBINSON

(Name typed or printed) _____

(Title)

(Date)

8/30/00

Hawaiian Electric Company, Inc. _____

(Client)

By: _____

(Signature)

Paul Over

(Name typed or printed) _____

Financial Vice President & Treasurer

(Title)

August 30, 2000

(Date)

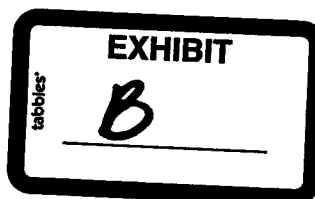


EXHIBIT A
CORPORATE MASTER AGREEMENT
GENERAL TERMS AND CONDITIONS

1. LICENSE GRANT AND RIGHT OF USE.

- a. Provided that the Agreement and each relevant Schedule have been fully executed by both Vignette and Client, Vignette grants to Client a nonexclusive and nontransferable license to install and use the number of copies of the object code version of the Programs and if applicable, the source code version of Custom Programs, pursuant to the terms and conditions herein and in the executed Schedules. Unless otherwise designated, all licenses granted hereunder shall be perpetual.
- b. Unless otherwise specified on the relevant Schedule, each copy of the Software licensed hereunder may be installed on one single computer server. Client may use the Software for the functions expressly licensed by Client solely for Client's own internal business purposes in the software operating environment (if any) specified on the applicable Schedule. The Software may not be used to provide computer time sharing, third-party training on the use of the Software, virtual or actual hosting, or as a service bureau for any third parties. Client shall not (and shall not permit any employee or other third party to copy, use, analyze, reverse engineer, decompile, disassemble, translate, convert, or apply any procedure or process to the Software in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings for the Programs or any trade secret information or process contained in the Software. Other special license terms and restrictions specified on the relevant executed Schedules are incorporated by reference into this Section 1. Client's rights in the Software will be limited to those expressly granted in this Agreement. Vignette reserves all rights and licenses in and to the Software not expressly granted to Client under this Agreement.

2. FEES

- a. Client shall pay Vignette the license fees and the Maintenance fees for the Software specified on the applicable Schedule within 30 days after receipt of Vignette's invoice. Fees for subsequent Annual Maintenance Periods (as the term is defined in Section 4) will be invoiced on the Maintenance anniversary date and are due within 30 days after receipt of Vignette's invoice. All license fees paid hereunder are nonrefundable, except as provided in Section 7.a. below. All Software will be shipped FOB Vignette's site. Invoices may contain shipping and handling charges.
- b. Client shall pay any other fees and prices specified on a Schedule or Assignment of Work within 30 days after receipt of Vignette's applicable invoice.
- c. All prices and fees are in U.S. dollars unless otherwise specified. All amounts payable under this Agreement are exclusive of all sales, use, value-added, excise, property, withholding, and other taxes and duties. Client will pay all taxes and duties assessed in connection with this Agreement and Client's performance hereunder by any authority. Client will promptly reimburse Vignette for any and all Hawaiian taxes or duties that Vignette may be required to pay in connection with this Agreement or its performance. This provision does not apply to any taxes for which Client is exempt, provided Client has furnished Vignette with a valid tax

exemption certificate, or to Vignette's income or franchise taxes.

3. REPRODUCTION OF THE SOFTWARE

- a. Vignette shall provide Client with a single copy (the "Master Copy") of each Software product licensed hereunder. Subject to the other terms and conditions herein, Client may use the Master Copy (including all Updates provided hereunder) to install the number of copies specified on the relevant Schedule on Client's computer server(s) in accordance with the license grant.
- b. Client may also (i) make one copy of the Master Copy for archival purposes, (ii) install one copy of the Software at a backup location for its use only as and when necessary for business resumption purposes in the event of Client's primary computing facility becoming inoperable, (iii) install an additional copy as necessary to accommodate a move of the installed Software from one server to another (provided that the original installation is removed after the new server is operational), and (iv) copy the installed copies of the Software onto system backup media to the extent necessary to accommodate Client's normal system backup routines. Otherwise, Client may not copy the Software, in whole or in part.
- c. Client shall assume all responsibility for the quality of the copies made hereunder. Client shall include Vignette's copyright notice(s), proprietary rights legend(s), and other indicia of ownership on all copies, in the content and format as those that were contained on the Master Copy. Client shall pay all duplication and distribution costs incurred by Client by copying the Software, and shall also pay applicable use taxes, customs duties and similar fees.

4. MAINTENANCE AND OTHER SERVICES

- a. Provided Client elects to obtain maintenance services ("Maintenance") for a Program and pays all applicable Maintenance fees, Vignette shall provide Client with the following Maintenance services for the period commencing on the date Vignette delivers the relevant Program to Client through the period ending one anniversary year thereafter (the "Initial Maintenance Period"):
- i. Updates to the Programs. An Update shall mean a subsequent release of the Program(s) that Vignette makes generally available to its current Maintenance customers for the Programs. Updates include Refinements, defined as solutions, changes and corrections to the Programs as are required to keep the Programs in substantial conformance with the applicable Documentation and that are created by Vignette as corrections for defects in the Programs. Updates shall not include any release, option or future product that Vignette licenses separately; and
- ii. Web-based support, consisting of information on the most current release of the Programs through Vignette's web site, including available Refinements; and
- iii. Provided Client elects to obtain Vignette's telephone support service ("Phone Support") and pays the Phone Support fees specified on the applicable Schedule, Vignette shall provide Client with Phone Support in the form of advice and counsel via telephone regarding Client's use of the Programs for the number of persons specified on the applicable Schedule. Unless otherwise specified on the relevant Schedule, Phone Support shall be provided from 8:00 AM to

Vignette Corporate Master Agreement

6:00 PM (Central Time), exclusive of holidays observed by Vignette.

- b. Upon expiration of the Initial Maintenance Period, Maintenance shall automatically renew for successive annual periods (each an "Annual Maintenance Period"), provided (i) Vignette continues to offer Maintenance for the relevant Program(s) to its general client base; (ii) Client pays the Maintenance fees applicable for the relevant Annual Maintenance Period, and (iii) Client does not terminate Maintenance by providing Vignette with at least 30 days written notice prior to the expiration of the applicable Initial or Annual Maintenance Period. Maintenance fees for the Program(s) shall be calculated per the applicable Schedule. All Maintenance fees shall be due and payable at the beginning of each Maintenance Period. Further, Updates shall be deemed Software for purposes of this Agreement.
- c. Client agrees to provide Vignette with all information and materials requested by Vignette for use in replicating, diagnosing and correcting an error or other Program problem reported by Client. Client acknowledges that all Updates provided by Vignette will be cumulative in nature, and therefore Client agrees to install all Updates provided by Vignette. Client further acknowledges that Vignette's ability to provide satisfactory Maintenance is dependent on Client (i) installing all Updates and (ii) providing Vignette with the information necessary to replicate Program problems.
- d. Vignette shall not be obligated to provide Maintenance for any software other than the Programs (including all Updates) as delivered by Vignette to Client. Except to the extent Vignette modifies the Programs pursuant to the provision of Maintenance, Vignette shall have no obligation to provide Maintenance for any Program that has been customized or modified by any party, including Vignette, or for any Custom Software.
- e. Vignette shall provide consulting and training Services (each an "Assignment"), under the terms of this Agreement, agreed to by the parties and specified on one or more separately executed Schedule(s) or Assignment of Work(s). In the event of any conflict between this Agreement and an Assignment of Work, the provisions of the Assignment of Work shall prevail. All Assignments shall be billed on a time and materials basis at Vignette's then-current consulting rates unless otherwise agreed in writing by the parties. Any monetary limit referenced in an Assignment of Work shall be an estimate only for purposes of Client's budgeting and Vignette's resource scheduling unless expressly stated to be a definitive limit. Vignette shall have the right to use third parties in performance of Assignments hereunder and, for purposes of this Agreement, all references to Vignette or its employees shall be deemed to include such third parties. Client shall provide Vignette access to its equipment, systems and other facilities to the extent reasonably required by Vignette for the performance of Assignments hereunder. For any on-site services requested by Client, Client agrees to reimburse Vignette for its actual, reasonable travel and other out-of-pocket expenses incurred.

5. CONFIDENTIALITY

- a. Any business, operational or technical information provided to Client by Vignette hereunder that is marked or otherwise identified as confidential or proprietary, or that Client knows or should know is confidential or proprietary, the Software and other deliverables furnished by Vignette (including, but not limited to the oral and visual information relating thereto and

provided in Vignette's training classes, seminars, and publications), and the terms of and pricing under this Agreement (collectively Vignette's "Proprietary Information") contain valuable and confidential information that is proprietary to Vignette and to third parties from whom Vignette has obtained marketing rights (the "Third Party Licensors"), and which includes and constitutes trade secrets and unpublished copyrighted material of Vignette and the Third Party Licensors. Client agrees to maintain the confidentiality of Vignette's Proprietary Information and to only use it in carrying out its rights and obligations under this Agreement. Nothing in this Agreement shall be construed to convey any title or ownership rights to the Software or Proprietary Information to Client. Client shall not sublicense, rent, assign, transfer or disclose the Proprietary Information to any third party and shall not reproduce, perform, display, prepare derivative works of, or distribute the Proprietary Information except as expressly permitted in this Agreement. Client shall not disclose the results of any benchmark tests of the Programs to any third party without Vignette's prior written approval. Client shall make commercially reasonable efforts to prevent the theft of any Proprietary Information and/or the disclosure, copying, reproduction, performance, display, distribution and preparation of derivative works of the Proprietary Information except as expressly authorized herein.

- b. Vignette agrees to maintain the confidentiality of business, operational and other information provided by Client to Vignette hereunder, provided such information is marked or otherwise identified by Client as confidential or proprietary or is of a nature that Vignette knows or should know is confidential or proprietary (also referred to herein as "Proprietary Information"), and will only use it in carrying out its rights and obligations under this Agreement.
- c. Both parties agree to restrict access to the Proprietary Information of the other only to employees who (i) require access in the course of their assigned duties and responsibilities in connection with this Agreement, and (ii) have agreed in writing to be bound by provisions no less restrictive than those set forth in this Section 5.
- d. The confidentiality obligations of the parties regarding the Proprietary Information of the other shall not apply to any material or information that (i) is or becomes a part of the public domain through no act or omission by the receiving party, (ii) is independently developed by employees of the receiving party without use or reference to the Proprietary Information of the other party, (iii) is disclosed to the receiving party by a third party that, to the receiving party's knowledge, was not bound by a confidentiality obligation to the other party, or (iv) is demanded by a lawful order from any court or any body empowered to issue such an order. Each party agrees to notify the other promptly of the receipt of any such order, and to provide the other with a copy of such order.

6. TERM AND TERMINATION

- a. This Agreement shall continue in force and effect perpetually unless terminated pursuant to its provisions.
- b. This Agreement, any Assignment of Work, and/or any license granted hereunder may be terminated in accordance with the following:

- i. Vignette may terminate this Agreement, any Assignment of Work and/or any licenses granted herein:

A Upon 15 calendar days notice if Client uses, transfers or discloses any of the Software or other Proprietary Information, or any copy or modification thereof, in violation of this Agreement, unless Client has fully cured such breach within such 15 day period;

B Upon 30 calendar days written notice if Client has breached any other material provision of this Agreement, including failure to make payments when due, and such breach is not fully cured within such 30 day period.

ii Client may terminate this Agreement or any Assignment of Work on 30 calendar days written notice if Vignette has breached any material provision of this Agreement and such breach is not fully cured within such 30 day period.

c. Upon termination of the Agreement or any license(s) granted herein, Client's right to use and/or possess the affected Software and other related Proprietary Information shall immediately cease. Client shall immediately stop using all such Proprietary Information (including Software) and shall return all copies to Vignette, except that Client may instead choose to delete all installed copies off of any and all storage media possessed by Client. Client shall provide Vignette with written certification signed by an officer of Client that all copies of the Software have been returned or destroyed and that Client has retained no copies.

d. Any incomplete Assignment of Work(s) shall be terminated concurrently with this Agreement. Client shall pay a pro-rata portion of any Assignment that is incomplete at the time of termination and for which payments have not been made and Vignette shall deliver to Client copies of all such incomplete work for which payment has been made, unless any applicable license for such work has been terminated.

e. Termination of this Agreement, any Assignment of Work or any license granted hereunder shall not limit the remedies otherwise available to either party, including injunctive relief.

7. WARRANTIES

a. Vignette warrants that for the first 90 days following delivery of the Programs to Client (the "Warranty Period"), (i) the Programs as delivered will perform substantially in conformance with the applicable Documentation, and (ii) that the digital or electronic media on which the Programs and the Documentation are distributed are free from defects in materials and workmanship. Vignette does not warrant that the Programs will operate in combinations except as specified in the Documentation. Notwithstanding any other provision of this Agreement, Vignette and Client acknowledge that Client's use of the Software or other deliverables provided hereunder may not be uninterrupted or error-free. As Client's sole and exclusive remedy and Vignette's entire liability for any breach of the foregoing warranty, Vignette will, at its sole option and expense, promptly repair or replace any medium or Program which fails to meet this limited warranty or, if Vignette is unable to repair or replace the medium or the Program, refund to Client the applicable license fees paid upon return of the nonconforming item to Vignette.

b. Vignette warrants that its Services provided hereunder shall be performed consistent with generally accepted industry standards. This warranty shall be valid for 60 days from the date of performance of the relevant service.

c. Vignette warrants to Client that Vignette has the right to enter into this Agreement and to grant the rights and licenses herein

and, that to the best of Vignette's knowledge, the Software does not infringe any patent or copyright or violate any other proprietary rights of a third party. Vignette's sole and exclusive obligation, and Client's sole and exclusive remedy, for breach of this warranty with respect to intellectual property or proprietary rights of any kind, is Vignette's indemnification of Client as set forth in Section 8 below.

d. Provided that all date data provided to the Programs is in full 4 digit year format, Vignette warrants that the Programs as delivered to Client by Vignette: (i) have been designed to be Year 2000 compliant, which shall include, as an illustration but not a limitation, date data century recognition, and calculations that accommodate same and multi-century formulae and date values; (ii) will operate in substantial accordance with the Documentation prior to, during and after the calendar year 2000 AD; and (iii) shall not end abnormally or provide invalid or incorrect results as a result of date data, specifically including date data which represents different centuries or more than one century. The foregoing warranty shall not apply to (iv) third party software that is or may be used in conjunction with the Programs, including database and operating systems vendors, (v) any non-compliance to the extent caused by hardware, third party software or applications and content developed with or operating with the Programs as delivered, or (vi) Client's use of other than a current unaltered release of the Programs if use of a current, unaltered release of the Programs would avoid the nonconformance. Client is solely responsible for all system integration and testing of the Software in a fully Year 2000-compliant operating environment, including all hardware, systems software, databases, network environment, and other interoperating components.

e. Vignette warrants that it will use commercially reasonable efforts to ensure the Software as delivered by Vignette does not contain viruses, worms, Trojan horses or other unintended malicious or destructive code ("Malicious Code"). If Malicious Code is discovered in Software as delivered by Vignette, Vignette shall provide Client with a clean copy that does not contain such Malicious Code within 30 days following Client's notice to Vignette of a breach of this warranty. However, Client is hereby notified that the Software may contain time-out devices, counter devices, and/or other devices intended to ensure the limits of a particular license will not be exceeded ("Limiting Devices"). If the Software does contain Limiting Devices, Vignette shall ensure that Client receives any codes or other materials necessary to use the Software to the limits of Client's license.

f. EXCEPT AS EXPLICITLY STATED IN THIS AGREEMENT, VIGNETTE MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

8. VIGNETTE INDEMNITIES

- a. Vignette will defend or settle, at its expense, any action brought or allegation made against Client to the extent that it is based upon a claim that the Software, as provided by Vignette to Client under this Agreement and used within the scope of this Agreement, infringes any copyright, trade secret, U.S. patent or other proprietary right, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are awarded against Client. Vignette's obligations hereunder are contingent on the following conditions:
- i Client must notify Vignette in writing promptly after Client becomes aware of a claim or the possibility thereof; and
 - ii Client must grant Vignette the sole control of the settlement, compromise, negotiation, and defense of any such action; and
 - iii Client must provide Vignette with all information related to the action that is reasonably requested by Vignette; and
 - iv Vignette may, at its option, (A) obtain the right for Client to continue using the Software; or (B) replace or modify the Software so it is no longer infringing, or (C) terminate the applicable license(s) and remove the Software. If Vignette so terminates the applicable license(s) and removes the Software, Vignette shall refund to Client a pro-rata portion of the license fees paid for such license(s) based on straight-line depreciation over a 60 month period following the relevant delivery date(s).
- b. The foregoing indemnity shall not apply to any infringement claim to the extent arising from (i) Software that has been modified by anyone other than Vignette; and/or (ii) Client's use of the Software in conjunction with Client data where use with such data gave rise to the infringement claim; and/or (iii) Client's use of the Software with other software or hardware, where use with such other software or hardware gave rise to the infringement claim; and/or (iv) use of other than the most current, unaltered Update to the Software if such claim would have been avoided by the use of such Update and/or (v) compliance by Vignette with designs, plans or specifications furnished by or on behalf of Client.
- c. Vignette will indemnify and hold Client harmless from all actual liabilities, damages and losses incurred by Client arising out of any legal action based on any claim of wrongful death, bodily injury or physical destruction of tangible property to the extent resulting from any acts or omissions of Vignette in the performance of its duties hereunder. The indemnity specified in this subsection is contingent on the conditions specified in subsections (a)(i)-(iii) above.
- d. Vignette shall not be liable hereunder for any settlement made by Client without Vignette's advance written approval or for any award from any action in which Vignette was not granted control of the defense.
- e. The parties agree to cooperate in good faith in the defense of any legal action or suit that causes one party to invoke an indemnity hereunder.
- f. This Section 8 states Vignette's entire liability and Client's exclusive remedy for infringement of intellectual property rights of any kind.

9. CLIENT INDEMNITIES

- a. Except to the extent Client is entitled to indemnification under Section 8.a. above, Client will defend or settle, at its expense, any action brought or allegation made against Vignette to the extent that it is based upon (i) a claim that any materials, as provided by Client to Vignette under this Agreement, infringes any patent, copyright, trade secret or other proprietary or intellectual property right, or (ii) Client's use of the Software including, but not limited to, claims that Vignette is liable for contributory infringement of a copyright, patent, trade secret, or other proprietary or intellectual property right of a third party, or that Vignette is liable in tort or under statutory liability for defamation, invasion of privacy, or similar theories of law, and Client will pay any costs, damages, expenses (including reasonable attorneys' fees) or liabilities resulting from or arising out of Vignette's payments to third parties due to such actions or claims. Client's obligations hereunder are subject to the following conditions:
- i Vignette must notify Client in writing promptly after Vignette becomes aware of a claim or the possibility thereof; and
 - ii Vignette must grant Client the sole control of the settlement, compromise, negotiation, and defense of any such action; and
 - iii Vignette must provide Client with all information related to the action that is reasonably requested by Client.
- b. Client will indemnify and hold Vignette harmless from all actual liabilities, damages and losses incurred by Vignette arising out of any legal action based on any claim of wrongful death, bodily injury or physical destruction of tangible property to the extent resulting from any acts or omissions of Client hereunder. The indemnity specified in this subsection is subject to the conditions specified in subsections (a)(i)-(iii) above.
- c. Client represents and warrants that it shall comply with all laws, rules, and regulations of the United States and other countries that may be applicable to the Software or to Client's activities under this Agreement. Client agrees to indemnify and hold harmless Vignette from all liabilities, damages, losses, claims, actions and expenses (including attorneys' fees) arising from breach of the warranties or Client's obligations set forth in this paragraph. The indemnity specified in this subsection is subject to the conditions specified in subsections (a)(i)-(iii) above.
- d. Client shall not be liable hereunder for any settlement made by Vignette without Client's advance written approval or for any award from any action in which Client was not granted control of the defense.
- e. The parties agree to cooperate in good faith in the defense of any legal action or suit that causes one party to invoke an indemnity hereunder.
- f. This Section 9 states Client's entire liability and Vignette's exclusive remedy for infringement of intellectual property of any kind.

10. LIMITATIONS OF LIABILITY

- a. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT WITH RESPECT TO VIGNETTE'S OBLIGATIONS UNDER SECTION 8, NOTWITHSTANDING THE FORM (E.G., CONTRACT, TORT (INCLUDING NEGLIGENCE))

STATUTORY LIABILITY OR OTHERWISE) IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT AGAINST VIGNETTE, NEITHER VIGNETTE NOR ITS THIRD PARTY LICENSORS SHALL BE LIABLE HEREUNDER FOR DAMAGES WHICH EXCEED, IN THE AGGREGATE, THE FEES PAID BY CLIENT FOR THE SPECIFIC SOFTWARE OR SERVICES WHICH GAVE RISE TO SUCH DAMAGES.

b. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL VIGNETTE OR ITS THIRD PARTY LICENSORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE DAMAGES, OR FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO THOSE FOR BUSINESS INTERRUPTION OR LOSS OF PROFITS, EVEN IF VIGNETTE HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE.

c. NOTHING IN THIS AGREEMENT SHALL LIMIT EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY A PARTY'S NEGLIGENCE OR LIABILITY FOR FRAUD.

d. The provisions of this Agreement allocate the risks between Client and Vignette. Vignette's pricing reflects this allocation of risk and the limitations of liability specified herein.

11. MISCELLANEOUS

a. In the event any action is brought to enforce any provision of this Agreement or to declare a breach of this Agreement, the prevailing party shall be entitled to recover, in addition to any other amounts awarded, reasonable legal and other related costs and expenses, including attorney's fees, incurred thereby.

b. Client shall comply with all then current export and import laws and regulations of the United States and such other governments as are applicable to the Software. Client hereby certifies that it will not directly or indirectly, export, re-export, or transship the Software or related information, media, or products in violation of United States laws and regulations.

c. For each Program licensed hereunder, if requested by Vignette, Client shall place the Vignette "Powered by Vignette" or similar type of logo ("Logo") and hot link provided by Vignette on Client's home page(s). Therefore, during the term of this Agreement, Vignette grants Client a limited license to use the trademarks selected by Vignette for the sole and exclusive purpose of placing the Logo(s) selected by Vignette on Client's home page(s). Client shall not vary the appearance of the Logo(s) or any trademarks contained therein in any way. Client will replace or remove a Logo that Vignette finds in its reasonable discretion is not an appropriate display of Vignette's mark. Notwithstanding any other provision of this Agreement, any and all such service marks, trademarks, and trade names are, and shall remain, the exclusive property of Vignette and all goodwill arising out of or relating to Client's use of the Logo(s) or trademarks shall inure to the benefit of Vignette. Client will not at any time take any action or position in conflict with Vignette's ownership of the Logo(s) or trademarks. The rights granted to Client hereunder will terminate upon any termination of this Agreement. Client shall conform to all applicable laws related to its use of such trademarks, service marks and trade names.

d. Client may not assign this Agreement or any license granted or created hereunder whether by operation of law, change of

control, or in any other manner, without the prior written consent of Vignette, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Client may assign this Agreement to any Affiliate of Client, provided that (i) the assignee agrees in writing to be bound by the terms and conditions of this Agreement, (ii) neither Client nor the assignee are in default hereunder, (iii) the assignee is not a competitor of Vignette, and (iv) Client agrees to remain liable for any breach of this Agreement by the assignee. ("Affiliate" of a party shall mean such party's parent corporation, an entity under the control of such party's parent corporation at any tier, or an entity controlled by such party at any tier. "Control" shall mean the power to direct or cause the direction of the management and policies of the entity through the ownership of more than 50% of the outstanding voting interests in such entity.)

e. The parties are independent contractors and nothing in this Agreement shall be deemed to make either party an agent, employee, partner or joint venturer of the other party. Neither party shall have the authority to bind, commit, or otherwise obligate the other party in any manner whatsoever. Vignette may use Client's plain text name to list Client as a customer of Vignette..

f. During the term of this Agreement and for six months thereafter, both parties agree not to solicit or to offer employment to any employees of the other party without it's the other party's prior written consent.

g. Any notice required under this Agreement shall be given in writing and shall be deemed effective upon mailing by first class mail, properly addressed and postage prepaid, or delivery by courier service to the address specified on the face page hereof or to such other address as the parties may designate in writing.

h. If any portion of this Agreement is determined to be or becomes unenforceable or illegal, such portion shall be deemed eliminated and the remainder of this Agreement shall remain in effect in accordance with its terms as modified by such deletion. This Agreement shall be governed by and interpreted in accordance with the laws of the United States and the State of Hawaii, excluding its choice of law rules.

i. Definitions set forth in any part of this Agreement shall apply to all parts of this Agreement. In the event of a conflict between the terms of different parts of this Agreement, the following order of priority shall apply: first, the relevant Schedule(s); second, the relevant Assignment(s) of Work; third the Exhibits; and fourth, the Agreement.

j. Client shall permit Vignette by any reasonable and appropriate means to verify that Client has complied with the provisions of Sections 1 (Software License), 5 (Confidentiality) and 6 (Termination), and Client agrees to cooperate fully with such a verification. Verification shall be at Vignette's expense unless Client is in material breach of this Agreement. All such verifications shall take place upon not less than three business days notice to Client, during Client's regular business hours and will be conducted in a manner designed to minimize any impact on Client's normal business operations. Vignette shall be entitled, in addition to its other legal remedies, to obtain injunctive relief to enforce the terms of Sections 1, 2, 5 and 6.

k. The following terms and conditions will survive termination: Sections 1(b)(except for the first 2 sentences), 2, 5, 6(c), 6(d) 8, 9, 10 and 11.

- i. If Client is the United States Government or any contractor thereof, all licenses granted hereunder are subject to the following: (i) for acquisition by or on behalf of civilian agencies, as necessary to obtain protection as "commercial computer software" and related documentation in accordance with the terms of this Commercial Software Agreement as specified in 48 C.F.R. 12.212 of the Federal Acquisition Regulations and its successors; (ii) for acquisition by or on behalf of units of the Department of Defense ("DOD") as necessary to obtain protection as "commercial computer software" and related documentation in accordance with the terms of this commercial computer software license as specified in 48 C.F.R. 227-7202-2 of the DOD F.A.R. Supplement and its successors.
- iii. This Agreement (including the attached Schedules, Assignment of Work(s) Exhibits and referenced attachments) constitute the entire agreement between the parties regarding the subject matter hereof and supersede all proposals and prior discussions and writings between the parties with respect thereto. The parties agree that this Agreement cannot be altered, amended or modified, except in writing that is signed by an authorized representative of both parties. It is expressly agreed that the terms of any Client purchase order or other ordering document (except for mutually executed license Schedules and Assignments of Work) shall be without force and effect.. This Agreement shall also supersede all terms of any unsigned or "shrinkwrap" license included in any package, media or electronic version of software licensed under a Schedule.

EXHIBIT B

Terms and Conditions for Non-U.S. Corporations or Entities

If Client is not a corporation or other legal entity formed in a state of the United States, the terms and conditions of this Exhibit B shall apply to this Agreement. If Client is a corporation or other legal entity formed in a state of the United States, this Exhibit B is inapplicable.

1. Notwithstanding anything to the contrary in this Agreement, Vignette may give notice in writing to Client to terminate this Agreement, with immediate effect:
 - a. Upon (A) the institution by or against Client of insolvency, receivership or bankruptcy administration or compulsory winding-up proceedings or any other proceedings for the settlement of Client's debts; (B) Client's making any assignment for the benefit of creditors; or (C) Client's liquidation, dissolution or ceasing to conduct business in the normal course;
 - b. In the event that any current legislation or exchange controls under applicable law preclude Client from making payments to Vignette in United States currency for a period of 60 days; provided, however, that termination under this subsection shall not relieve Client of its payment obligations under this Agreement; or
 - c. Upon the enactment of any law, or regulation by any governmental authority which would impair or restrict (A) the right of Vignette to terminate this Agreement as herein provided, (B) Vignette's right, title or interest in the Software and the intellectual property rights therein and thereto, or (C) Vignette's rights to receive the payments under this Agreement.
2. Client represents and warrants that the provisions of this Agreement, and the rights and obligations of the parties hereunder, are enforceable under the laws of the countries to which the Software will be delivered and in which the Software will be used. Client agrees to indemnify and hold harmless Vignette from all liabilities, damages, losses, claims, actions and expenses (including attorneys' fees) arising from breach of the warranties or Client's obligations set forth in this paragraph.
3. Client represents and warrants that no currency control laws prevent the payment to Vignette of any sums due under this Agreement.
4. Client represents and warrants that, as of the Effective Date of this Agreement, no consent, approval or authorization of, or designation, declaration or filing with, any governmental authority which has not been made or obtained by Client prior to the Effective Date, is required in connection with the valid execution, performance and delivery of this Agreement. If the laws or regulations of any country require this Agreement to be approved, registered or notified with or by any governmental authority, Client will be solely responsible for such obligations. Vignette will have the right to withhold delivery of the Software until it has received satisfactory evidence that any required approvals, registrations or notifications have been obtained. Vignette will provide Client with such assistance as Client may reasonably request in making or obtaining any such approvals, registrations or notifications. In the event that the issuance of any approvals, registration or notifications is conditioned upon an amendment or modification to this Agreement which is unacceptable to Vignette, Vignette will have the right to terminate this Agreement without further obligation whatsoever to Client.
5. Client will advise Vignette of any legislation, rule, regulation or other law (including but not limited to any customs, tax, trade, intellectual property or tariff law) which is in effect or which may come into effect after the Effective Date of this Agreement which affects the importation of the Software into, or the use and the protection of the Software within the country or countries to which the Software will be shipped and in which the Software will be used, or which has a material effect on any provision of this Agreement.
6. If any withholding or similar tax must be paid under the laws of any country outside of the U.S. based on the payments to Vignette specified in this Agreement, then Client will pay all such taxes and the amounts payable to Vignette under this Agreement will be increased such that the amounts actually paid to Vignette will be no less than the amounts Vignette would have received notwithstanding such tax. Client will provide Vignette with written documentation, including copies of receipts, of any and all such taxes paid in connection with this Agreement.
7. The parties specifically disclaim the UN Convention on Contracts for the International Sale of Goods.
8. Except for actions for preliminary injunctive relief and actions to enforce the decisions of the arbitrators, all disputes arising out of or related to this Agreement, including the scope, the construction or application of this Agreement, shall be resolved by arbitration in accordance with the commercial arbitration rules of the American Arbitration Association then in force. The arbitration hearings and all meetings pursuant to this section shall be held in Austin, Texas, and shall be conducted in English. If the parties cannot agree upon a single arbitrator within 15 days after demand by either of them, each party shall select one arbitrator knowledgeable of the computer service industry and notify the other of its selection, and such two arbitrators shall select a third. The arbitrator(s) shall conduct a hearing within 30 days after their selection. A majority of the arbitrators shall determine the decision/award, which shall be rendered within five days after the completion of the hearing. The decision of the arbitrator(s) shall be final and binding upon the parties both as to law and to fact, and shall not be appealable to any court in any jurisdiction. The expenses of the arbitrators shall be shared equally by the parties. Nothing in any indemnification provision hereunder shall be construed as having any bearing on the award of attorneys fees under this Section. The provisions for integration contained in this Agreement shall also apply to the admissibility of evidence in any dispute subject to arbitration.
9. This Agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall be for accommodation only and shall not be binding upon the parties hereto. All communications and notices to be made or given pursuant to this Agreement shall be in the English language. Les parties aux présentes confirment leur volonté que cette convention de même que tous les documents y compris tout avis qui s'y rattache, soient rédigés en langue anglaise (translation: "The parties confirm that this Agreement and all related documentation is and will be in the English language.").

10. The terms and conditions of this Exhibit B shall survive termination of the Agreement.