

**UNIVERSITY OF HAWAII**  
**Investment Provider Service Agreement**

This Agreement, effective as of the date hereof, by and between the University of Hawai'i (hereafter the "Employer") and \_\_\_\_\_ (hereafter the "Service Provider") sets forth the terms and conditions of the agreement between the Employer and Service Provider relating to services provided by Service Provider to the Employer in support of the Internal Revenue Code of 1986, Section 403(b) (hereafter "403(b)") Retirement Plan (hereafter the "Plan"). The parties intend that Service Provider will provide certain services to the Employer, as needed, to support the Plan. In furtherance of this intention, the parties agree as follows:

**DUTIES AND RESPONSIBILITIES OF SERVICE PROVIDER.**

Service Provider shall:

- 1) Qualified 403(b) Accounts. Offer only investment products ("Accounts") that meet the requirements of Section 403(b) of the Internal Revenue Code of 1986 (Code), as amended from time to time, any regulations issued thereunder and any other applicable state or federal law.
- 2) Communications. If requested by the Employer, assist in communicating the Plan to employees, which may include, but is not limited to, presenting information about the Plan and available investment options at group meetings, responding to individual inquiries from employees, and providing the Employer with informational material describing the Plan.
- 3) Informational Materials. If requested by the Employer, prepare written notice of eligibility/availability for distribution to employees, prepare and distribute materials that describe the Plan, including contribution limits, possible tax advantages and disadvantages, investment options, enrollment procedures, and other information necessary for participating in the Plan.
- 4) Forms. Prepare forms to facilitate enrollment and investment selection for Plan Accounts, including, without limitation, Account applications issued by Service Provider and beneficiary designation forms.
- 5) Individual Meetings. Provide individual meetings with employees, upon request, to explain 403(b) retirement savings options and other Plan options, respond to questions or concerns about the Plan, discuss the impact of Plan participation on the employee, and assist with the completion of necessary forms and related documentation.
- 6) Participant Statements. Send statements to participants at each participant's address of record no later than 15 business days after the end of each calendar quarter. Each participant may also obtain statements via the Service Provider's secure web site.
- 7) Employer Plan Reports. Prepare Plan reports based on participant records processed through Service Provider upon the Employer's request, including, without limitation, information on the number of

participants in each investment option, the total amount of assets, the beginning Plan balance, previously unreported contributions, and the ending Plan balance.

- 8) Disburse Contributions to Account Investments. Allocate all amounts received in good order from the Employer to Accounts selected by participants. Such allocation received in good order by Service Provider from the Employer shall occur within one (1) business day of receipt by the Employer or the Employer's designee, unless circumstances beyond the control of Service Provider justify a later transmittal. In no event shall allocations received in good order by Service Provider occur later than 72 hours of Service Provider's receipt of proceeds from the Employer.
- 9) Plan Exchanges. Provide that when receiving assets in an exchange or transfer under the Plan, distribution restrictions are not less stringent than those imposed under the transferor contract and that the accumulated benefit (as defined in applicable income tax regulations governing 403(b) plans, including the Plan) under the receiving contract immediately after the exchange or transfer is at least equal to the accumulated benefit under the transferor contract immediately prior to the exchange or transfer.
- 10) Confidentiality. Service Provider agrees to maintain the confidentiality and/or privacy of all information about participants and employees provided by the Employer and to provide the Employer with documentation of Service Provider's relevant privacy policies. All information relating to Service Provider's furnishing of services hereunder shall only be communicated, shared, and exchanged with duly authorized Service Provider representatives directly related to the investment and processing of contribution transactions, the Employer, and/or the Employer's designated representative.
- 11) Solicitation. Service Provider and its duly authorized representatives shall comply with all pertinent written directives, whether issued by the federal or state governments or the Employer, regarding the solicitation of employees of the Employer.
- 12) 403(b) Provisions. Service Provider agrees to do the following:
  - a) Advise of annual deferral limits. Advise employees and participants of: (1) the annual deferral limits under Section 402(g) of the Code and (2) the annual limitations applicable under Section 415(c) of the Code. Provide calculations to determine eligible contribution limits upon request of any employee or participant. Base any such calculations upon applicable federal and state laws, rules, and regulations. Certify the accuracy of any such calculations, subject to the accuracy of information provided by the employee or the participant.
  - b) Calculate maximum allowable contribution. Properly calculate the Maximum Allowable Contribution for employees and participants who are utilizing the "catch-up" provisions of Sections 402(g)(7) and/or 414(v) of the Code in accordance with the information provided to Service Provider by the Employer and the employee or participant.
  - c) Administer loans. If permitted by the investment product, properly administer loans in accordance with applicable federal and state laws, rules, and regulations.
  - d) Provide notices. Provide tax reporting and required notices to participants requesting distributions.

- e) Process corrective distributions. Permit and process corrective distributions of excess deferral contributions and properly track and report and/or distribute excess Section 415(c) of the Code contributions in accordance with applicable Internal Revenue Service (IRS) regulations where such excess deferrals or excess contributions have been identified by Service Provider or by the participant, Employer or the Employer's designated representative.
- f) Withhold taxes. Withhold and report any federal and state taxes on any distributions made directly to any employee or participant and/or their beneficiaries, as appropriate.
- g) Notice of required minimum distributions. Provide notification to participants who are age 70 1/2 that they may be required to take Required Minimum Distributions and calculate and distribute such amounts as may be required under the Plan and the Code.
- h) Administer hardship distributions. If permitted by the investment product, administer hardship distributions including (if applicable) notifying the Employer of the hardship distribution with instructions for the Employer to suspend all elective deferrals by participant to the Plan and all other similar plans sponsored by the Employer for 6 months.
- i) Enforce distribution restrictions. Administer distributions and enforce distribution restrictions under Section 403(b) of the Code.
- j) Administer transfers and exchanges. Administer transfers and exchanges to the extent permitted under the Plan subject to the Employer designation of authorized providers and products.
- k) Provide income tax audit information. Provide information to the Employer relating to the Plan Accounts and other 403(b) accounts held by Service Provider for participants in the event of an income tax audit subject to written authorization by the Employer and/or participant (as applicable). For example:
  - i) Annual listing of total contributions, by investment provider, for each year under audit;
  - ii) Annual listing of all participant distributions for each year under audit;
  - iii) Annual listing of outstanding participant loans for each year under audit;
  - iv) Annual listing of any participant defaulted loans for each year under audit;
  - v) Annual listing of exchanges and transfers processed for each year under audit;
  - vi) Copies of IRS tax reporting information (Forms 1099-R) for all distributions and defaulted loans for each year under audit.

Such information shall be provided electronically, in hard copy, or in a manner otherwise mutually agreed upon by Employer and Service Provider.

#### **DUTIES AND RESPONSIBILITIES OF EMPLOYER.**

The Employer shall:

1. Determine Eligible Employees. Determine which employees of the Employer are eligible to participate in the Plan and certify that the 403(b) program(s) will be made available to all eligible employees as required under the terms of Section 403(b)(12)(A)(ii) of the Code.

2. Primary Contact Person. Appoint a primary contact person for purposes of implementing, administering, and coordinating any issues that may arise with respect to the Plan.
3. Transmit Contributions. Transmit all contributions to Service Provider in a time and manner acceptable to both parties and consistent with applicable federal and state tax laws, rules, and regulations.
4. Identify Investment Providers. Make available to all employees and Service Provider a current list of authorized investment providers and investment products (annuity contracts, custodial accounts, grandfathered life insurance contracts) available under the Plan.
5. Provide Information. Agree to furnish Service Provider, as soon as practicable, any and all information that may be reasonably required for Service Provider to fulfill its duties under this Agreement, including, without limitation, information on the participant's employment status, any exchanges and transfers authorized by the Employer or its designated representative, and information on any participant hardship withdrawals from other Accounts under the Plan.
6. Eligible Employer. Represent to Service Provider that the Employer qualifies under Section 403(b) of the Code as an organization eligible to offer this 403(b) plan to its employees. Agree to notify Service Provider if the Employer becomes an ineligible organization.
7. Plan Document. Represent to Service Provider that the Employer will maintain a written plan in accordance with applicable IRS regulations and that the Plan will provide for exchanges between authorized product providers or investment options.
8. Plan Exchanges. Agree that Service Provider may accept an exchange of assets from another 403(b) account under the Plan.
9. Third Party Administrator. Agree to notify Service Provider if the Employer has allocated certain specified administrative responsibilities to a third party and, by so notifying Service Provider, authorize Service Provider to share necessary Plan information with the third party administrator in a manner which is consistent with applicable privacy requirements under this Agreement and under applicable law.
10. Employer Contributions. Agree that the Employer will not make non-elective contributions into the Plan.

**BOTH PARTIES AGREE** that the following terms and conditions are included as part of this Agreement:

1. Information Sharing. Subject to any applicable federal and state laws, statutes, rules, and regulations, each party agrees to provide information necessary to comply with the applicable federal and state laws, statutes, rules, and regulations (including Section 403(b) of the Code) and the Plan, including information concerning the participant's employment status and information that takes into account other section 403(b) of the Code contracts/custodial accounts and any other information reasonably deemed necessary to ensure compliance, including, without

limitation, information required for distributions from the Plan, Plan loans, rollovers into the Plan, Plan-to-Plan transfers, and Plan exchanges. Such information shall be provided in a form and manner reasonably acceptable to both parties, and within a reasonable time of any request, but not later than 90 calendar days following any request.

2. Indemnification. Service Provider shall indemnify, defend, and hold harmless the Employer, its officers, employees, agents, representatives, and any person acting on the Employer's behalf, including members of the Employer's Board of Regents, from and against any claims, demands, suits, actions, causes of action, judgments, injunctions, orders, rulings, directives, penalties, assessments, liens, liabilities, losses, damages, costs, and expenses (including reasonable attorneys' fees, experts' fees and expenses, and any fees, costs, and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding), including, without limitation, claims for economic loss, property damage, personal injury, bodily injury, or death, arising from or connected with the following:
  - a. Exercise of rights. Service Provider's exercise of any of the rights and privileges under this Agreement.
  - b. Act or omission. Any act or omission by Service Provider or Service Provider's officers, employees, agents, representatives, invitees, or subcontractors (hereafter collectively "Service Provider's agents").
  - c. Violation. Any violation or alleged violation by Service Provider and/or Service Provider's agents of any applicable laws, statutes, rules, and regulations, arising from events, occurrences, or incidents related to or connected with this Agreement.
  - d. Misrepresentation. Any material misrepresentation or inaccuracy in any representation or warranty by Service Provider and/or Service Provider's agents under this Agreement.
  - e. Challenge. Any challenge to the authority of Service Provider and/or Service Provider's agents to negotiate, enter into, execute, or perform obligations under this Agreement.
  - f. Failure to perform. Any failure by Service Provider and/or Service Provider's agents, in whole or in part, to fully and properly perform any of the terms and conditions contained in this Agreement, including, without limitation, Service Provider's breach or default in the performance of any of said terms and conditions of this Agreement.
  - g. UNIVERSITY's enforcement. Any actions by the UNIVERSITY or others to enforce the terms and conditions of this Agreement, including, without limitation, any provision of this paragraph 2 (Indemnification) and the performance of any other obligations of Service Provider and/or Service Provider's agents hereunder.
3. Exclusive Services. Except as otherwise provided in this paragraph 3, this Agreement and the underlying contracts or accounts of the Plan are the exclusive arrangement between the parties

for services under the Plan and the terms of this Agreement do not extend beyond the Plan. Neither party shall have any other obligations or liabilities not specified herein unless both parties agree to such additional obligations or liabilities in writing.

4. Not Legal Advice. The parties agree that no service provided by or under the terms of this Agreement or under the Plan is to be construed as individual legal or tax advice to participants, nor to either party.
5. Term of the Agreement. This Agreement may continue until terminated and this Agreement may be terminated by either party, in writing, upon sixty (60) days prior written notice, provided, however, that if the Employer enters into an agreement with a third party administrator (hereafter the "TPA") to assist the Employer in administering and handling the Plan, and the TPA requires Service Provider to execute a separate agreement with the TPA, upon the full execution of the TPA/Service Provider agreement, this Agreement will terminate, without further notice, and such TPA/Service Provider agreement will be deemed to supersede this Agreement, which shall be of no further force or effect except as otherwise stated herein. Notwithstanding such termination, Service Provider's obligations arising during the term of this Agreement shall survive and remain in effect subsequent to such termination.
6. Applicable Law. This Agreement shall be construed, interpreted and governed by the laws of the State of Hawaii. Any litigation with respect to the terms or conditions of the Agreement will be conducted in the state courts of the State of Hawaii and the parties agree that venue lies therein.
7. Severability. Each party agrees that it will perform its obligations hereunder in accordance with all applicable laws, statutes, rules, and regulations now or hereafter in effect. If any term or provision of this Agreement shall be found to be illegal or unenforceable then, notwithstanding such finding, the remainder of this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.
8. Assignment. The Employer may assign its interests, rights, and obligations under this Agreement without the prior or other consent of Service Provider and Service Provider hereby agrees to be bound to the Employer's assignee under this Agreement. Service Provider must obtain the written consent of the Employer prior to assigning or otherwise transferring any of Service Provider's interests, rights or obligations under this Agreement, which consent is at the sole and absolute discretion of the Employer. In consenting to all or any portion of an assignment or other transfer, the Employer may impose such conditions on such assignment or other transfer as the Employer may reasonably deem necessary.

**CONTACT PERSONS FOR PURPOSE OF THIS AGREEMENT**

**Company**

_____ Company Name	_____ Address 1
_____ Company Contact Person	_____ Address 2
_____ Phone	_____ City, State, ZIP Code
_____ Fax	
_____ Email	_____ UH Service Provider Number

**University of Hawai'i**

_____ <u>Office of Human Resources</u>	_____ <u>2440 Campus Road, Admin Services Bldg 2</u>
_____ <u>Dean Isono</u>	_____ <u>Administrative Services Building 2</u>
_____ Contact Person	_____ <u>Honolulu, Hawai'i 96822</u>
_____ <u>(808) 956-8643</u>	
_____ Phone	
_____ <u>(808) 956-3952</u>	
_____ Fax	
_____ <u>uh-tda-1@hawaii.edu</u>	
_____ Email	

**BALANCE AND TRANSACTION INQUIRY CONTACT**

_____ Balance Inquiry Department	_____ Address 1
_____ Balance Inquiry Contact Person	_____ Address 2
_____ Phone	_____ City, State, ZIP Code
_____ Fax	
_____ Email	

**REMITTANCE ADDRESS AND CONTACT**

**Company**

_____ Remittance Department	_____ Address 1
_____ Remittance Contact Person	_____ Address 2
_____ Phone	_____ City, State, ZIP Code
_____ Fax	
_____ Email	

University of Hawai'i Investment Provider Service Agreement

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By executing this Agreement, dated \_\_\_\_\_ each party acknowledges that it has read this Agreement and agrees to its terms.

AGREED TO:

Employer:  
University of Hawai'i - Office of Human Resources  
2440 Campus Road  
Administrative Services Bldg 2  
Honolulu, Hawai'i 96822

Service Provider:  
\_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
David S. McClain  
President

By: \_\_\_\_\_  
Authorized Representative Signature  
  
\_\_\_\_\_  
Print Authorized Representative's Name  
  
Title: \_\_\_\_\_