



STATE OF HAWAII  
BOARD OF EDUCATION

## **AUTHORIZING CONTRACT**

This Contract is executed by and between the BOARD OF EDUCATION (the “Board”), as established by the Constitution of the State of Hawaii, whose mailing address is 1390 Miller Street, Room 405, Honolulu, Hawaii, 96813, and \_\_\_\_\_ (the “Authorizer”), whose mailing address is \_\_\_\_\_, singularly “Party” and collectively “Parties.”

### **RECITALS**

WHEREAS, Article X, Section 1 of the Constitution of the State of Hawaii provides for the establishment, support, and control of a statewide system of public schools free from sectarian control, a state university, public libraries, and such other educational institutions as may be deemed desirable, including physical facilities therefor;

WHEREAS, Article X, Sections 2 and 3 of the Constitution of the State of Hawaii establish the Board of Education with the power, as provided by law, to formulate statewide educational policy and appoint the superintendent of education as the chief executive officer of the public school system;

WHEREAS, Chapter 302D, Hawaii Revised Statutes (“HRS”), sets forth the laws under which charter schools and their authorizers are created and governed;

WHEREAS, Chapter 8-515, Hawaii Administrative Rules (“HAR”), sets forth the administrative laws under which authorizers are established and overseen;

WHEREAS, pursuant to Chapter 302D, HRS, and Chapter 8-515, HAR, the Board has the power to grant chartering authority to an eligible entity and enter into an authorizing contract with that entity, thereby establishing it as an authorizer;

WHEREAS, Section 302D-1, HRS, defines an “authorizer” as an entity with chartering authority to review charter applications, decide whether to approve or deny charter applications, enter into charter contracts with applicants, oversee public charter schools, and decide whether to authorize, renew, deny renewal of, or revoke charter contracts;

WHEREAS, Section 8-515-2, HAR, defines an “authorizing contract” as a fixed-term, renewable contract between an authorizer and the Board that outlines the performance expectations of the authorizer and the roles, powers, and responsibilities for each party to the contract;

WHEREAS, through this Contract, the Parties are desirous of setting clear performance and accountability expectations for the Authorizer while preserving the autonomy of the Authorizer to fulfill its authorizer responsibilities and contribute to the development of high quality charter schools;

WHEREAS, this Contract is the first such agreement between the Parties;

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants, representations, warranties, and agreements contained herein, the Parties hereby agree as follows:

1. Term. The term of this Contract shall be six years, commencing on \_\_\_\_\_, 20\_\_, and terminating on \_\_\_\_\_, 20\_\_.
2. Legal Status. The Authorizer is [an accredited public OR private postsecondary institution / an agency of the County of \_\_\_ / an agency of the State of Hawaii / a nonprofit organization exempt from federal taxes under Section 501(c)(3) OR Section 501(c)(6) of the Internal Revenue Code]. [**\*\*For private entities\*\***] The Authorizer shall remain registered to do business in Hawaii with the Department of Commerce and Consumer Affairs and in good standing as [an accredited postsecondary institution, pursuant to Chapter 305J, HRS, / a nonprofit organization, pursuant to Chapter 414D, HRS, and maintain federal tax exemption status under 501(c)(3) OR Section 501(c)(6) of the Internal Revenue Code] through the duration of the term of this Contract. The Authorizer shall be nonsectarian in its operations. Pursuant to Section 302D-25, HRS, the Authorizer may not bring suit against any entity or agency of the State of Hawaii.
3. Specific Terms. The specific terms defined in Exhibit A to this Contract set forth the material elements of the Authorizer’s strategic direction, including, but not limited to, the Authorizer’s mission and vision statements and its organizational goals. The Authorizer shall operate in a manner consistent with the specific terms defined in Exhibit A at all times. Revisions to any of the specific terms in Exhibit A shall be

considered material changes to the Contract and shall require prior written approval by the Board unless otherwise indicated in this Contract.

4. Chartering Authority. The Authorizer shall exercise its chartering authority only within the jurisdiction defined by the chartering authority jurisdiction in Exhibit A to this Contract. The Authorizer shall execute its essential powers and duties, pursuant to Section 302D-5, HRS, in accordance with national principles and standards for quality charter authorizing, pursuant to Section 302D-6, HRS, and with the spirit and intent of Chapter 302D, HRS.
5. Portfolio of Schools. The Authorizer may authorize and enter into charter contracts with no more than the number of charter schools defined by the maximum portfolio size in Exhibit A.
6. New Charter Schools. If the Authorizer approves a charter application, pursuant to Section 302D-13, HRS, the Authorizer shall notify the Board and the Hawaii Department of Education (the "Department"), in writing, within ten (10) business days of the decision to approve. Pursuant to Section 302D-14.5, HRS, the Authorizer shall establish pre-opening criteria and require any pre-opening charter school to meet such criteria before allowing it to commence operations. The Authorizer shall notify the Board and the Department, in writing, within three (3) business days of any determination by the Authorizer of whether or not a pre-opening charter school has met the pre-opening criteria.
7. Charter Contract Renewal, Nonrenewal, and Revocation. If the Authorizer renews, does not renew, or revokes a charter contract pursuant to Section 302D-18, HRS, the Authorizer shall report to the Board within 15 calendar days of taking action. The report shall set forth the action the Authorizer took, reasons behind its decision, and assurances as to its compliance with all requirements set forth in Chapter 302D, HRS.
8. Charter Transfers. If a charter school within the Authorizer's portfolio of schools desires to transfer to another authorizer or if a charter school within another authorizer's portfolio desires to transfer to the Authorizer, the Authorizer shall follow the Board's process for charter transfers, pursuant to Chapter 8-517, HAR, cooperate with the charter school governing board and the other authorizer involved, and fulfill any requests from the Board necessary to process a charter transfer request.
9. Authorizer Evaluation. The Hawaii Authorizer Performance Evaluation System ("HAPES"), as adopted by the Board and modified from time to time, sets the performance expectations for the Authorizer, pursuant to Section 8-515-10, HAR. The organizational goals defined in Exhibit A of this Contract set the specific

additional performance terms, pursuant to Section 302D-4(g), HRS. The Authorizer shall fulfill all requests from the Board necessary to conduct performance evaluations or special reviews in accordance with Sections 8-515-11 and 8-515-12, HAR. The Board reserves the right to modify HAPES and shall notify the Authorizer, in writing, whenever there are modifications.

10. Self-Evaluation. The Authorizer shall evaluate its internal ability to oversee its portfolio of charter schools—including, but not limited to, its capacity, infrastructure, and practices—on at least an annual basis against national principles and standards. The Authorizer shall develop and implement continuous improvement plans to address any findings resulting from self-evaluations and report such findings and continuous improvement plans in its annual report to the Board.
11. Corrective Action. The Board may require actions of the Authorizer, including, but not limited to, a corrective action plan pursuant to Section 8-515-13, HAR, to correct performance deficiencies, as measured by HAPES, or violations of material provisions of existing charter contracts, this Contract, Board policies, rules, or law. The Board shall provide the Authorizer with written notice and a reasonable period to remedy identified problems.
12. Revocation of Chartering Authority. Failure of the Authorizer to make significant progress in remedying identified problems, as described in paragraph 11 of this Contract, in a reasonable time and to a degree acceptable to the Board is grounds for termination of this Contract and revocation of the Authorizer's chartering authority, pursuant to Section 302D-11, HRS, and Section 8-515-19, HAR.
13. Renewal of Chartering Authority. This agreement may be renewed for an additional term pursuant to Chapter 8-515, HAR. The Authorizer shall fulfill all requests from the Board necessary to process the chartering authority renewal application in accordance with Sections 8-515-15, 8-515-16, and 8-515-17, HAR. The Board may decide not to renew this Contract and terminate the Authorizer's chartering authority for any reason described in Section 8-515-14, HAR, including, but not limited to, the Authorizer's performance, as measured by HAPES, which shall indicate whether the Authorizer is making sufficient progress toward the performance expectations set forth in this Contract.
14. Suspension of Specific Chartering Authority. The Board may decide the Authorizer's performance, as measured by HAPES, is in need of improvement but not wholly unsatisfactory to warrant revocation or nonrenewal of this Contract. In such instance, the Authorizer shall not approve new charter schools, approve the replication or expansion of existing charter schools within its portfolio of schools, accept charter transfers, or any combination thereof, as determined by the Board. The Board may lift this suspension of chartering authority if it determines the

Authorizer has adequately addressed the stated performance deficiencies. Any breach of suspension of chartering authority set by the Board is grounds for termination of this Contract and revocation of the Authorizer's chartering authority, pursuant to Section 302D-11, HRS, and Section 8-515-19, HAR.

15. Transition of Chartering Authority. In the event the Authorizer's chartering authority is terminated and it ceases operation for any reason, including, but not limited to, nonrenewal, revocation, or voluntary surrender of this Contract, the Authorizer shall cooperate with the Board in ensuring the orderly transfer of charter schools within the Authorizer's portfolio of schools to other authorizers. Pursuant to Section 8-517-6, HAR, the Authorizer shall provide the Board with information about academic, financial, organizational, and operational performance status of each charter school in its portfolio as well as any existing outstanding obligations pursuant to its charter contracts. The Authorizer shall provide the Board with the contact information for governing board members and school leaders at each of the charter schools within its portfolio. The Authorizer shall distribute and dispose of all assets owned by the Authorizer including tangible, intangible, and real property in accordance with applicable law.
16. Compliance with Laws. The Authorizer shall comply with all applicable federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, including, but not limited to:
  - 16.1. Conflict of Interest. By its signature on this Contract, the Authorizer certifies: 1) it has reviewed and understands ethics and conflict of interest laws, including, but not limited to, Section 302D-8, HRS, and Chapter 84, HRS, if applicable; and 2) will take no action inconsistent with those laws. Failure of the Authorizer to comply with ethics and conflict of interest laws as applicable is, in itself, grounds for termination of this Contract and may result in the loss of other contracts or grants with the State of Hawaii. The Authorizer shall adopt and adhere to a conflict of interest policy to ensure objective decision-making.
  - 16.2. Procurement. Pursuant to Section 302D-25, HRS, the Authorizer is exempt from Chapter 103D, HRS, but shall develop and adhere to a policy for the procurement of goods, services, and construction consistent with the goals of public accountability and public procurement practices.
  - 16.3. Fees. The Authorizer shall receive no payments from the charter schools within its portfolio of schools other than those for services purchased by charter schools at their own discretion in accordance with Section 302D-10, HRS. The Authorizer shall not charge charter schools within its

portfolio of schools fees for any activities, functions, or operations required of authorizers by law.

- 16.4. Charter School Allocations. The Authorizer shall distribute state and federal funds to the charter schools within its portfolio of schools in accordance with state and federal laws, including, but not limited to, Section 302D-28, HRS. The Authorizer shall not withhold any portion of a charter school's allocation except for noncompliance purposes to the extent allowed by law.
- 16.5. Governing Board Membership. The Authorizer shall monitor the membership of the governing boards of the charter schools within its portfolio of schools for compliance with Section 302D-12, HRS.
- 16.6. Monitoring Compliance with Laws. The Authorizer shall monitor, in accordance with the terms of the charter contract, all of the charter schools within its portfolio of schools for compliance with all applicable federal, state, and county laws, ordinances, codes, rules, and regulations, pursuant to Sections 302D-5 and 302D-17, HRS.
- 16.7. Monitoring Performance. The Authorizer shall monitor and evaluate, in accordance with the terms of the charter contract, the academic, financial, organizational, and operational performance of each of the charter schools within its portfolio of schools on at least an annual basis, pursuant Sections 302D-5, 302D-16, and 302D-17, HRS. The Authorizer shall require the charter schools within its portfolio of schools to adhere to the appropriate standards for student achievement as defined by the Board, pursuant to Section 302D-1, HRS.
- 16.8. Data Reporting. The Authorizer shall require all charter schools within its portfolio of schools to transmit fiscal, personnel, and student data required by the Department as electronic data files that meet the educational data reporting standards set by the Board, pursuant to Section 302D-23, HRS.
- 16.9. Financial Audits and Reviews. The Authorizer shall require each charter school within its portfolio of schools to complete an annual independent financial audit or financial review, pursuant to Section 302D-32, HRS.
- 16.10. Health and Safety. The Authorizer shall comply with all directions given by the Board to address any serious health and safety issues that may exist at a charter school within the Authorizer's portfolio of schools, pursuant to Section 302D-17, HRS.

- 16.11. Appeals. In the event an eligible party appeals a decision of the Authorizer in accordance with Section 302D-15, HRS, the Authorizer shall provide the necessary, appropriate, and timely documentation to the Board, pursuant to Chapter 8-510, HAR, in order for the Board to make a decision on the appeal.
- 16.12. School Closure. The Authorizer shall maintain a charter school closure protocol in accordance with Section 302D-19, HRS. The Authorizer shall implement its closure protocol in the event a charter school within the Authorizer's portfolio of schools closes for any reason, including, but not limited to, the nonrenewal, revocation, or voluntary surrender of a charter contract or fiscal insolvency, pursuant to Section 302D-28.5, HRS. The Authorizer shall obtain all financial and enrollment records within thirty (30) days of the school's closure.
- 16.13. Annual Report. The Authorizer shall submit an annual report to the Board and the Legislature of the State of Hawaii in accordance with Section 302D-7, HRS. The Authorizer shall adhere to all format, content, and submission requirements set by the Board, pursuant to Section 302D-11, HRS. The Authorizer may require each charter school within its portfolio of schools to submit an annual report to assist the Authorizer in gathering complete information, pursuant to Section 302D-17, HRS.
- 16.14. Annual Audit. The Authorizer shall annually complete an independent financial audit that conforms to generally accepted accounting principles and report its audited authorizing operating costs and expenses in its annual report to the Board, pursuant to Section 302D-7, HRS.
- 16.15. Technical Support. Pursuant to Section 302D-5, HRS, the Authorizer shall not provide technical support to a prospective charter school applicant, an applicant governing board, or a charter school within its portfolio of schools in cases in which the technical support may impact decisions related to the approval or denial of a charter application or the renewal, revocation, or nonrenewal of a charter contract. The Authorizer shall provide technical assistance as required by federal law and Section 302D-30, HRS. The Authorizer may provide any other technical support not prohibited by law.
- 16.16. School Autonomy. The Authorizer shall not regulate the charter schools within its portfolio of schools beyond the powers and duties set forth in Chapter 302D, HRS. The Authorizer shall include in its charter contracts clear provisions that respect, preserve, and support the essential

autonomies of charter schools, including, but not limited to, the areas of educational planning, staffing, budgeting, and scheduling.

17. Compliance with Board Policy. The Authorizer shall comply with all applicable Board policies, as amended from time to time and determined by the Board.
18. Annual Budget. The Authorizer shall submit an annual budget to the Board by June 30 of each year for the following fiscal year. For the purposes of this Contract, the Authorizer shall operate on a fiscal year that begins on July 1 and ends on June 30.
19. Complaints Process. The Authorizer shall establish and adhere to a process for resolving public complaints and require each charter school within its portfolio of schools to establish a complaints process that includes an opportunity for complainants to be heard by the respective school's governing board. The Authorizer's process shall allow a charter school's governing board final decision-making authority on complaints. In cases where complaints may pertain to possible violations of law or charter contract terms, the Authorizer shall investigate and appropriately address such complaints. The Authorizer's complaint process shall be readily accessible from its website.
20. Participation in Training. The Authorizer shall attend all mandatory training seminars whether required in person or by video or telephone. If the Authorizer fails to participate in any mandatory training required by the Board, the Authorizer is subject to a finding of noncompliance and may be subject to revocation of its chartering authority. The Board shall provide notice of all mandatory training seminars within a reasonable time to permit attendance.
21. Miscellaneous Provisions.
  - 21.1. Entire Contract. The Parties intend this Contract, including all attachments and exhibits, to represent a final and complete expression of their agreement, which shall be considered the Contract. All prior representations, understandings, and discussions are merged herein, and no course of prior dealings between the Parties shall supplement or explain any terms used in this document. The Parties recognize that amendments to this Contract may be approved from time to time hereafter.
  - 21.2. Amendments. Any amendment to this Contract shall be effective only if approved by a majority vote of the Board at a public meeting. The Authorizer may submit any proposed requested amendment to the Board in accordance with instructions provided by the Board. The Authorizer shall not take action related to the requested amendment until the Board



has approved said amendment. The Authorizer shall agree to amend this Contract as required by changes to law, rules, and Board policies.

- 21.3. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Hawaii, including all requirements imposed by applicable policy and regulation, and all applicable federal laws of the United States.
- 21.4. Conflict Between Contract, Law, and Board Policy. In the event of a conflict between this Contract, state law, administrative rules, and Board policies, the order of precedence shall be state law, followed by administrative rule, followed by Board policy, followed by the terms and conditions of this Contract.
- 21.5. Non-Assignability. The Authorizer shall not assign or subcontract any duty, obligation, right, or interest under this Contract without prior written approval of the Board.
- 21.6. Notices. Unless otherwise specified by law, any official written notice required to be given by a Party to this Contract shall be delivered personally or by United States first class mail, postage prepaid, to the Parties' mailing addresses first indicated in this Contract. A notice shall be deemed to have been received three business days after mailing or at the time of actual receipt, whichever is earlier. Parties are responsible for notifying each other in writing of any change of mailing address.
- 21.7. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
- 21.8. Waiver. The failure of either Party to insist upon the strict performance of or compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the Parties' right to enforce the same in accordance with this Contract.
- 21.9. No Third-Party Beneficiary. The enforcement of the terms and conditions of this Contract shall be strictly reserved to the Board and the Authorizer. Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other person. It is the express intent of the Parties to this Contract that any person receiving services or benefits hereunder shall be deemed an incidental beneficiary only, without enforceable rights against a Party to this Contract.

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IN WITNESS WHEREOF, the Parties have made an entered into this Contract as of the effective date.

BOARD OF EDUCATION  
[Authorized Signatory Name]  
[Title]

[AUTHORIZER ENTITY NAME]  
[Authorized Signatory Name]  
[Title]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

DRAFT

**Exhibit A**  
**Specific Terms**

<b>Authorizer Name:</b>	<i>Official name of the authorizer.</i>
<b>Authorizer’s Decision Maker*:</b>	<i>Position title and/or organizational unit with decision making authority for the authorizer (e.g., governing board, department head, etc.).</i>
<b>Authorizer Head**:</b>	<i>Name and title of person responsible for executing the terms of this contract and daily authorizer operations.</i>
<b>Authorizer Email Address**:</b>	<i>Official email address of the authorizer that the Board of Education and other agencies can use to send official communications.</i>
<b>Chartering Authority Jurisdiction:</b>	<i>Statewide, regional, or local, as defined under Section 8-515-7, Hawaii Administrative Rules. Select one. Statewide: Throughout Hawaii Regional: Within the County of [redacted] Regional: Within the geographic boundaries of [island] Local: Within the [redacted] Complex Area, as designated by the Hawaii Department of Education</i>
<b>Mission:</b>	<i>Authorizer’s mission, as stated in its application for chartering authority.</i>
<b>Vision:</b>	<i>Authorizer’s strategic vision, as stated in its application for chartering authority.</i>
<b>Organizational Goal 1:</b>	<i>Authorizer’s first organizational goal, as stated in its application for chartering authority.</i>
<b>Organizational Goal 2:</b>	<i>Authorizer’s second organizational goal, as stated in its application for chartering authority.</i>
<b>Organizational Goal 3:</b>	<i>Authorizer’s third organizational goal, as stated in its application for chartering authority.</i>
<b>Maximum Portfolio Size:</b>	<i>The maximum number of charter schools the authorizer can oversee in its portfolio of schools.</i>

\*The authorizer's decision maker may be changed without prior written approval by the Board of Education ("Board"), provided that the authorizing contract holder's head executive or governing board notifies the Board of the change in writing.

\*\*The authorizer head or email address may be changed without prior written approval by the Board, provided that the authorizer's supervisor notifies the Board of the change in writing.

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