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LESLIE KOBATA
REGISTRAR OF CONVEYANCES

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DEPUTY REGISTRAR

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
BUREAU OF CONVEYANCES

P.O. BOX 2867
HONOLULU HAWAII 96803

August 14, 2020

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Board Members:

SUBJECT: REQUEST FOR APPROVAL TO CONTINUE "INFORMATION SERVICES"

This submittal requests Board approval for the Bureau of Conveyances (BOC) to continue offering "information services" to customers for a fee, develop and offer new services for a fee, and to establish or change fees as appropriate for "information services" in accordance with Hawaii Administrative Rules (HAR) 13-16-32.

Currently the BOC provides these "information services" through a third party. Customers have executed agreements with National Information Consortium LLC (fka Hawaii Information Consortium) or NIC, our current Land Records Management System (LRMS) vendor for these services. In Fiscal Year 2019, the BOC contracted West Central Indexing, a highly respected company specializing in Land Records Management to replace its current system ("LandLink"). Notwithstanding COVID-19 delays, the BOC's new LRMS ("RecordEase"), will be fully operational by December 2020 with many state-of-the-art upgrades such as Optical Character Recognition. In addition, the new LRMS will allow the BOC to reduce costs and increase efficiencies by directly managing the "Information Services" agreements previously outsourced to NIC.

The transition to RecordEase will allow the BOC to improve current "information services" for data subscribers and address outdated fee schedules that lag behind market rates for similar services throughout the US. Our primary customer for these services is the Title/Escrow industry and our secondary customers would be those needing the BOC's document images/data such as attorney offices and financial services firms. All of these customers and any new ones would be dealing directly with the BOC rather than with NIC once we 'Go-Live' with RecordEase.

ITEM G-1

Attached is a draft agreement, which has been reviewed and approved to form by the Deputy Attorney General's office, that each customer will be required to execute with the BOC to subscribe to our "information services".

RECOMMENDATION:

That the Board:

- 1) give approval for the BOC to continue offering "information services" to customers for the appropriate fees.
- 2) give approval for BOC to develop and offer new "information services" or improve existing services for the appropriate fees.

Respectfully submitted,

Leslie Kobata

LESLIE KOBATA, Registrar
Bureau of Conveyances

APPROVED FOR SUBMITTAL:

Suzanne D. Case

SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources

Attachment 1

ATTACHMENT 1

Monthly Subscriber Account Agreement

You must have a monthly Subscriber Account to access the Bureau of Conveyances (BOC) services described herein through Bureau of Conveyances. The account is offered on an annual basis and has the benefit of monthly invoicing and payment. The monthly Subscriber Account provides a convenience to those who perform multiple transactions, enables Subscriber Account holders to manage those transactions and pay using the holder's preferred billing method, and allows Subscriber Account holders up to ten Registered Users with unique usernames and passwords per account.

To obtain a monthly Subscriber Account, read all the information carefully, complete and sign this Agreement and return it along with a valid Certificate of Good Standing to the address above with a check or money order made payable to "Bureau of Conveyances" in the amount of \$500. You may pay by credit card or automatic check by indicating the option on page two and providing the account information when contacted. Thereafter, the annual registration renewal is \$500 and will be billed to your account automatically.

There are restrictions on access to certain records and some records are restricted in use. You may be subject to penalties under law if you violate any of these restrictions. If you have any questions regarding information contained within this Agreement, please contact Bureau of Conveyances at (808) 587-0147.

Signing up is as easy as 1 and 2

To use Bureau of Conveyances services as a registered Subscriber Account user...

1. **Complete this Agreement.** All fields are required unless otherwise noted. Be sure to choose a billing method and list on page two at least one name to be assigned as registered Subscriber Account user(s). You may assign up to ten (10) names per account, but the account holder is responsible for all actions and charges that occur on the account.
2. **Sign and return this Agreement with your Certificate of Good Standing and check or money order made out to Bureau of Conveyances.** A PDF Agreement must be followed up with a signed original. Upon receipt of a completed Agreement, the Bureau of Conveyances will contact you with usernames and passwords. When you receive them you may begin using our services that have a charge immediately.

Mailing and Billing Addresses

Mailing Address

Name of Organization (or name person if individual account): _____
Contact (person for account setup): _____ Title: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone: _____ (Ext.) _____ Fax: _____

Billing Address

Name of Organization (or name person if individual account): _____
Attention: _____ Title: _____
Email Address (to receive invoices): _____
Address: _____
City: _____ State: _____ Zip: _____
Phone: _____ (Ext.) _____ Fax: _____

Continue on the next page.

Form revised: 7-16-2020

ATTACHMENT 1

Registered User(s)

Provide at least one and up to 10 name(s) to be registered as user(s). Note: Subscriber Account holders are responsible for all registered users; all users, by using the username and password, agree to the terms and conditions of this Agreement.

| Ln | Name | Email |
|-----|------|-------|
| 1. | | |
| 2. | | |
| 3. | | |
| 4. | | |
| 5. | | |
| 6. | | |
| 7. | | |
| 8. | | |
| 9. | | |
| 10. | | |

Billing Option

Check (✓) one. We will contact you for the account information.

| | |
|---|---|
| <input type="checkbox"/> Credit Card: AmEx, Discover, MasterCard Card Number: <u>DO NOT COMPLETE – We will</u> Expiration Date: <u>contact you for this information.</u> Note: 3% processing fee will be added to your total balance. (Fees and charges are charged to credit card.) | <input type="checkbox"/> Auto Check Bank Name: <u>DO NOT COMPLETE</u> Routing #: <u>We will contact you</u> Account #: <u>for this information.</u> (Fees and charges will be deducted from checking account.) |
|---|---|

Other Information (optional)

To help Bureau of Conveyances to best serve you, please answer the following questions:

Which best describes the account holder? Business* Private Citizen** Government Agency

*If you are a business, what type of business are you? _____

*If you are a business, how will electronic access to state information assist your business? _____

**If you are a private citizen, how will electronic access to state information be of assistance to you? _____

Which state government service(s) would you like to have available via the Internet?

Continue on next page.

ATTACHMENT 1

Monthly Subscriber Account Agreement (*continued*)

Services to Enable

Indicate which services you would like to access with your login(s). Fees will be billed to your account

- Conveyance Grantor/Grantee Indexed Data** (\$200 per month) – The data available for download is for the preceding 7 days only (excluding weekends and holidays).
- Conveyance Image Updates** (\$500 per month) – The images available for download are for the preceding 7 days only (excluding weekends and holidays).
Also requires subscription to Conveyance Unlimited Certificates/Documents.
- Conveyance Unlimited Certificates/Documents** (\$500 per month)

Authorization

I have read and agree to the terms and conditions of this Monthly Account Agreement. If I am signing on behalf of an organization or company, I represent that I have authority to bind the organization or company to this Agreement.

Signature

Printed Name

Title

Date

ATTACHMENT 1

Monthly Subscriber Account Agreement – Terms and Conditions

The Account Holder agrees that the provision of services from Bureau of Conveyances to each Account Holder and Registered User on the Account will be subject to the Terms and Conditions in this Agreement. The Bureau of Conveyances provides on-line access, from kiosks or personal computers, to information services through Bureau of Conveyances. The Account Holder and each Registered User wish to use the databases and services made available by the Bureau of Conveyances. The Account Holder represents that it has shown this agreement to each Registered User and that it has acquainted each Registered User with the terms and conditions, which apply to usage by a Registered User of the Bureau of Conveyances services.

Terms and Conditions

1. This Agreement sets forth the terms and conditions under which the Bureau of Conveyances will provide services to Account Holder's Registered Users through Bureau of Conveyances.
2. The Bureau of Conveyances reserves the right to add, withdraw or modify any service without consulting Account Holder or any Registered User prior to withdrawing such service and shall have no liability whatsoever to any Account Holder or Registered User in connection with additions, withdrawals or modifications of any such service.
3. The Bureau of Conveyances acknowledges that Account Holder and Registered User information will be maintained and used for only the purposes of managing the Bureau of Conveyances network and will not be provided to commercial entities. For more complete information on the privacy policy of Bureau of Conveyances, please consult the privacy statement at www.Bureau of Conveyances.
4. This Agreement is subject to change by the Bureau of Conveyances in matters other than online services with notice to Account Holders and Registered Users.
5. Account Holder acknowledges that he/she (or its authorized representative) has read this agreement and agrees that it is the complete and exclusive statement between the parties, superseding all other communications, oral or written. This agreement, and other notices provided to Account Holder or other Registered Users by the Bureau of Conveyances, constitute the entire agreement between the parties. This Agreement may be modified only by written amendment signed by the parties except as otherwise provided for in this agreement. In the event Account Holder issues a purchase order or other instrument covering the services herein specified, it is understood and agreed that it is for Account Holder's internal purposes only and shall in no way modify, add to, or delete any of the terms and conditions in this agreement. Account Holder acknowledges that it has made available a copy of this agreement to each Registered User and has informed each Registered User that use of the network by a Registered User constitutes consent to this agreement.
6. Conditions of Use
 - a) Hours of Service: Service will be provided on a non-guaranteed basis seven days per week (Sunday through Saturday), twenty-four (24) hours per day, excluding scheduled maintenance as designated from time to time by the Bureau of Conveyances in its sole discretion.
 - b) User Names and Passwords: the Bureau of Conveyances will issue to the Account Holder up to 10 user names at the BOC's discretion and passwords per annual fee, for distribution, one to each Registered User. Each Registered User is responsible for preserving the secrecy of his/her User Name and Password; for ensuring that access to services and use of his/her User Name and Password is controlled by him/her; and that, in those instances where a purchase order provides time and/or dollar and/or database limitations, use by the Registered User does not exceed those limitations. Account Holder is liable for any and all charges for services to the User Names and Passholders on the Account, whether or not authorized by Registered User or by Account Holder.
 - c) Copyright and Ownership of Information: Account Holder and each Registered User agrees to comply with any copyright notices or other limitation on use applicable to services, databases, or other information provided through Bureau of Conveyances services. The respective government receiving or furnishing the same owns government information.
 - d) Limitation on Use of Information: Account Holder and each Registered User agrees to abide by all applicable use statements and requirements outlined for access of information or services through Bureau of Conveyances and is liable under law for violations of record use or access rules. Under no circumstances may Account Holder, or any other party acting by or through Account Holder, including Registered Users, or using any Registered User's User Name and Password, use data received from or through Bureau of Conveyances in any way except in full and complete compliance with all applicable laws. Account Holder and each Registered User recognizes that each transaction and statement of use will be logged and retained for Bureau of Conveyances' purposes. In addition, Account Holder's or each Registered User's company or institution may also be liable depending upon the facts.

ATTACHMENT 1

7. Payment

- a) Invoices for all services rendered will be prepared and provided by the Bureau of Conveyances or its fiscal agent. Fees shall be in accordance with the current Bureau of Conveyances fee schedule. Terms of invoice payment shall be net thirty (30) days.
- b) In addition to the fees contained herein, Account Holder shall pay Bureau of Conveyances for all sales, use, and excise taxes incurred by Bureau of Conveyances in providing services to Account Holder and each Registered User.
- c) Invoices 10 days past due may be subject to a delinquency charge of 1.5% per month of the amount in arrears, or the legal limit, whichever is less. Account Holder agrees to pay all costs of collection of delinquent accounts, including reasonable attorney's fees, as permitted by law.
- d) Two payment options are available. Bureau of Conveyances reserves the right to modify or restrict the use of any option at any time:
 - a. Auto Check Option - Bank Institution automatically deducts amount of fees out of checking account monthly.
 - b. Credit Card Option - MasterCard, American Express, Discover - Charges the fees to your credit card monthly.

8. Limitation of Liability

- a) The remedies set forth in this agreement are exclusive and in no event shall the State of Hawaii/Bureau of Conveyances or its employees of either be liable for special, indirect, incidental, or consequential damages, including, but not limited to, lost income or lost revenues, whether such damages arise out of breach of contract, negligence, strict liability, or any other theory of liability. Such damages shall in any event be limited to the charges paid for the previous month by Account Holder for the services in connection with which a claim of liability is asserted or imposed.
- b) Each Registered User and Account Holder agrees that the shall the State of Hawaii/Bureau of Conveyances or its employees will not be liable for any claim or demand of any nature or kind asserted against the State of Hawaii/Bureau of Conveyances or its employees by any third party, arising out of the services or materials provided for their use through the /Bureau of Conveyances; Each Registered User and Account Holder agrees to indemnify and hold harmless the State of Hawaii/Bureau of Conveyances and its employees from claims of third parties arising out of the use of the services or materials provided pursuant to this agreement to or through any Registered User or Account Holder on the Account.
- c) The State of Hawaii/Bureau of Conveyances and its employees shall not be liable for or deemed to be in default for any delays or failure in performance or interruption of service resulting directly or indirectly from any cause or circumstance beyond its reasonable control, including problems with or delays caused by its database or other providers.
- d) No action or suit arising out of the transactions pursuant to this Agreement, regardless of form, other than an action for payments due Bureau of Conveyances, may be brought by either party more than one year after the cause of the action accrues.
- e) The State of Hawaii/Bureau of Conveyances and its shall at no time be liable for any errors in or omissions from information available on the Bureau of Conveyances network.

9. Warranty

- a) The State of Hawaii/Bureau of Conveyances and its employees make no warranties express or implied, including but not limited to the implied warranties of merchantability and fitness for any particular purpose. While the Bureau of Conveyances strives for accuracy and completeness of data and services furnished pursuant to this Agreement, no warranty or representation as to accuracy or completeness is made or implied.
- b) Account Holder and each Registered User warrants that it is aware of and will comply with all applicable federal, state, or other laws with regard to access to or use of any and all information, databases, programs, or other products to which access is provided by or through the Bureau of Conveyances. Account Holder and each Registered User is liable under law for violations of record use or access rules committed by him or her, and agrees to abide by such rules. In addition, the Account Holder's or Registered User's organization or company may be liable if the rules are not enforced or are violated.

ATTACHMENT 1

10. Rate Changes

- a) Rates are as set forth in the Agreement insert and are established by the Bureau of Conveyances in its sole discretion (unless this Agreement is a fixed term agreement as detailed in Paragraph 10b below.)
- b) The parties may enter into a fixed-term agreement setting forth a set rate for a specified term. Any such agreement will be evidenced and detailed in writing.

11. Renewals

Accounts renew annually automatically on anniversary date unless the Bureau of Conveyances is notified in writing to the contrary. The appropriate annual fee will be applied in the billing for the renewal month. If an Account is canceled, no portion of that year's Account fee is refundable.

12. Data Integrity

Account Holder and each Registered User agrees not to tamper with, alter, or change in any fashion any databases or programs made available to Account Holder or any Registered User by the Bureau of Conveyances.

13. General

- a) Waiver: The waiver, modification, or failure to insist by the Bureau of Conveyances on any of these terms or conditions, shall not void, waive, or modify any of the other terms or conditions nor be construed as a waiver or relinquishment of the Bureau of Conveyances' right to performance of any such term or terms.
- b) Severability: If any provision or part of the Agreement shall be declared illegal, void, or unenforceable, the remaining provisions shall continue in full force and effect.
- c) Governing Law: This Agreement shall be governed by and construed according to the laws of the State of Hawaii as such laws are applied to contracts made and to be performed entirely in Hawaii, and all actions hereunder shall be brought in a federal or state court of competent jurisdiction in Hawaii and in no other jurisdiction.
- d) Assignment: This Agreement is not assignable or transferable by Account Holder or any Registered User and any attempted assignment or transfer shall be null and void and of no force or effect. The Bureau of Conveyances may assign this Agreement and/or the payments due without notice to or requirement for Account Holder's or any Registered User's permission or approval.