

**NOTICE OF SOLE SOURCE**  
Department of Water, County of Kauaʻi

The Chief Procurement Officer has received a Request For Sole Source in accordance with Hawaiʻi Administrative Rule §3-122-82 and Hawaiʻi Revised Statutes §103D-306. A preliminary review has been conducted and approved for posting of this Notice.

Accordingly, by posting of this Notice, constructive notice is provided to permit interested parties an opportunity to review a copy of the Request For Sole Source, attached and posted herewith, and to submit written objections within seven (7) days from the date this Notice was posted. Objections shall be submitted to:

Chief Procurement Officer or Designee  
Department of Water  
4398 Pua Loke Street  
Lihue, Hawaii 96766

Questions may be directed to the Chief Procurement Officer or Designee at phone: (808) 245-5434 or Email: [vreyna@kauaiwater.org](mailto:vreyna@kauaiwater.org).

A summary of the Sole Source Request follows:  
Proposed Vendor's Name and Address:

Peifer Security Solutions, LLC  
3747 Cherry Road  
Memphis, TN 38118

Brief description of proposed Sole Source Item:

The Department uses CyberLock locks, keys, and software for its security locks and keys for all remote sites and the baseyard facilities. Currently there is only one authorized vendor in the US who can provide services and sell equipment for CyberLock. In the past there were additional vendors that we could solicit quotes from, they no longer are authorized. In order to update our software and purchase new locks and keys we would need to purchase from the above named vendor.

BY: Ryan Smith

Date Notice Posted: October 3, 2019

SPACE BELOW RESERVED FOR RESPONSE TO REQUESTING DIVISION

TO: Val Reyna / Ryan Smith  
Division Head/Lead

Sole Source No. SS-2020-1 is assigned. This Notice was posted for seven (7) days. No objections were received. Please proceed with (1) processing of a requisition for a purchase order, or (2) contract preparation be sure to reference the assigned Sole Source No. in the contract.

Objection was received. Please contact the CPO or Designee.

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Chief Procurement Officer or Designee



# PEIFER

## Security Solutions

### Service Level Agreement for

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This document constitutes an agreement between Customer and Peifer Security Solutions, LLC ("PSS") to provide hosted software, database maintenance and support for the CyberAuditWeb Enterprise Software solution for Cyberlocks, Cyberkeys, Cyberkey communication devices and all other components of the Cyberlock access control system.

### Term

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This Agreement shall commence on the Effective Date and continue for a period of twelve (12) months (the "Initial Term") from the Activation Date. This Agreement shall automatically renew for successive additional periods equal in length to the Initial Term (each a "Renewal Term"), unless either party gives the other party written notice of its intention not to renew this Agreement not less than ninety (90) days prior to expiration of the Initial Term or then current Renewal Term, as applicable. The Initial Term, together with any Renewal Term, constitutes the "Term" of this Agreement.

### Service Overview

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This agreement is to outline the joint responsibilities for supporting the CyberAuditWeb Enterprise Hosted Software solution for Cyberlock.

### Software / Application

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The CyberAuditWeb Enterprise software allows for customer management of the Cyberlock System using Cyberkeys as an electronic access control solution for enhanced security where ever Cyberlocks and Cyberkeys are deployed.

## **PSS Responsibilities**

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Responsibilities specific to the Hosted CyberAuditWeb Enterprise Software solution:

### **Database Administration**

- Creating initial shell database in CAW Enterprise software.
- Backup and Recovery measures to safeguard data.
- Monitoring and maintaining space usage within the database.
- Provisioning and monitoring security measures within the database environment.
- Creating customer admin user accounts in application.
- Training customer on software and how to utilize 'Best Practices' for CAW Enterprise.

### **Hosting Services**

PSS will provide CAW Enterprise hosting services for applications with server space in a secure, controlled and redundant environment. Support includes security patching, maintenance, monitoring, and backup and recovery services.

Server Hosting and Administration service provides:

- Operating system installation, upgrade and patching as needed.
- Updating CyberAuditWeb Enterprise to the manufacturers latest posted version.
- Tech Support for CyberAuditWeb Enterprise.
- Adding/modifying/removing system user accounts.
- Monitoring file system and disk usage.
- Monitoring system usage; performance tuning and availability.
- Performing regular data and system backups, and periodically testing recovery procedures
- Installing any local software required by the system.

## **Customer Responsibilities**

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- After training, customer should understand the overall architecture and Hierarchy of CAW Enterprise.
- Customer is responsible for accuracy of all data input into the Cyberlock system software.

## **Service Availability**

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The access to login to CyberAuditWeb Enterprise database will generally always be available except for maintenance and unscheduled downtimes. Maintenance and updates will be performed during non peak hours.

End-user support is provided during Business Hours (8:00 a.m. to 5:00 p.m. CST Mon-Fri). Issues reported after 5:00 p.m. during the work week and weekends are handled the next business day.

### **Scheduled Maintenance**

If extended downtime maintenance is required, PSS will collaborate with customer on an acceptable timeframe.

## Termination Clause

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**Termination for Cause.** In the event of any material breach of this Agreement, the non-breaching party may terminate this Agreement prior to the end of the Term by giving thirty (30) days' prior written notice to the breaching party; provided, however, that this Agreement shall not terminate if the breaching party has cured the breach prior to the expiration of such thirty-day period.

**Termination for Insolvency.** If (i) insolvency, receivership or bankruptcy proceedings are instituted by or against a party, (ii) a party makes an assignment for the benefit of creditors or (iii) a party admits an inability to pay its debts as they come due, then in any such event the other party may in its sole discretion terminate this Agreement without notice.

**Effect of Termination.** Upon the expiration or sooner termination of this Agreement, all Services and Deliverables provided by PSS and any and all license rights of Customer under this Agreement shall automatically and immediately cease. In the event Customer terminates this Agreement prior to the end of the Term in a manner not expressly permitted hereunder, all Monthly Service Fees and other amounts that would have otherwise been payable to PSS hereunder during the remaining Term of this Agreement shall become immediately due and payable by Customer. All access to CyberAuditWeb Enterprise database will also be terminated.

### Limitation of Liability.

EXCEPT FOR LIABILITY IN RESPECT OF THE PARTIES' RESPECTIVE INDEMNIFICATION OBLIGATIONS UNDER INDEMNITY SECTION BELOW OR RESULTING FROM OR ARISING OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY, (i) IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS, LOST BUSINESS OR LOST SALES, AND DAMAGES DUE TO LOSS OR DISCLOSURE OF DATA OR OTHER INFORMATION) ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PROVISION OR USE OF ANY SERVICES OR DELIVERABLES HEREUNDER, THE DELAY OR INABILITY TO USE ANY SERVICES OR DELIVERABLES, OR OTHERWISE ARISING FROM THIS AGREEMENT, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (ii) THE TOTAL LIABILITY OF EACH PARTY FOR ANY CLAIM BY THE OTHER PARTY HEREUNDER, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED, IN THE AGGREGATE, THE FEES PAID TO PSS HEREUNDER IN THE THREE (3) MONTH PERIOD ENDING ON THE DATE THAT SUCH CLAIM OR DEMAND IS FIRST ASSERTED, PROVIDED, NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE FOREGOING LIMITATION ON LIABILITY SHALL NOT APPLY TO ANY FEES OR OTHER AMOUNTS OWED BY CUSTOMER TO PSS BUT NOT YET PAID. THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## Indemnity

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Each party shall indemnify and hold harmless the other party and its affiliates, and its and their directors, officers, employees and agents, from and against any and all claims, demands, actions and proceedings asserted by any third party, and all losses, liabilities, judgments, awards, settlements, damages, fines, injuries, penalties and costs (including reasonable legal fees and expenses) (collectively, "Losses") incurred in connection with such third party claims, for personal injury (including death) or damage to real and/or tangible property arising out of or resulting from acts or omission to act under this Agreement of any employees, contractors or agents of the indemnifying party.

PSS shall indemnify and hold harmless Customer and its affiliates, and its and their directors, officers, employees and agents, from and against any and all claims, demands, actions and proceedings asserted by any third party, and all Losses incurred in connection with such third party claims, arising out of or resulting from (i) any breach by PSS of this Agreement, and/or (ii) any claim that PSS's performance of the Services or the exercise by Customer of its rights granted under this Agreement in accordance with the terms hereof, infringes, misappropriates or violates the intellectual property rights of any third party.

Customer shall indemnify and hold harmless PSS and its affiliates, and its and their directors, officers, employees and agents, from and against any and all claims, demands, actions and proceedings asserted by any third party, and all Losses incurred in connection with such third party claims, arising out of or resulting from (i) any breach by Customer of this Agreement, (ii) Customer's use of any Services or Deliverables, including but not limited to any Third Party Components thereof, and/or (iii) any information that Customer transmits via, posts on, or accesses and / or views through the Internet or any Internet web-site, including as a result of or in connection with any claim that such information constitutes copyright infringement or infringement of any other intellectual property rights of any third party.

The indemnified party shall promptly notify the indemnifying party in writing of any claims, demands, actions and proceedings related to the indemnifying party's obligations under this Section, provided, however that the indemnifying party's obligations hereunder shall not be affected by any delay or failure in providing such notice unless and then only to the extent the indemnifying party's defense or

settlement of the applicable claim was materially prejudiced thereby. The indemnifying party shall have the right, at its sole expense, to defend with counsel reasonably acceptable to the indemnified party all such claims, demands, actions or proceedings and, so long as the indemnifying party is defending any such claim diligently and in good faith, the indemnifying party shall have full and complete authority for the defense thereof; provided, however, the indemnifying party shall have no authority to enter into any settlement or compromise on behalf of the indemnified party without the prior written consent of the indemnified party, which consent shall not be unreasonably withheld or delayed. If the indemnifying party does not undertake the diligent, good faith defense of a claim, the indemnified party shall have the right to conduct the defense of such claim at its sole expense, provided, (i) nothing in the foregoing shall limit or be deemed to limit a party's right to dispute that a claim (and/or any Losses arising therefrom) relates to an indemnifiable matter hereunder, and (ii) if the indemnifying party has agreed that a claim relates to an indemnifiable matter hereunder, the indemnified party shall have no authority to enter into any settlement or compromise on behalf of the indemnifying party without the prior written consent of the indemnifying party, which consent shall not be unreasonably withheld or delayed. In all circumstances, the indemnified party shall have the right to participate in the defense of any proceedings with counsel of its own choosing, at its sole expense, and shall cooperate with the indemnifying party in the defense of any claim maintained thereby.

## General Provisions

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This Agreement is an agreement for services and is not intended to and shall not constitute a lease of any real property.

**Relationship of the Parties.** The relationship established between the parties by this Agreement is that of independent contractors, and nothing contained herein shall or shall be construed to: (i) give either party the power to direct and/or control the day to day activities of the other, (ii) constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking, or (iii) allow a party to create or assume any obligation on behalf of the other party for any purpose whatsoever, except as expressly contemplated by this Agreement.

**Non-Solicitation.** During the Term of this Agreement and the six (6) month period following any expiration or termination of this Agreement, each party agrees that without the prior written consent of the other party it will not directly or indirectly solicit for employment or employ any person employed by the other party; provided, notwithstanding the foregoing, any employee who has been dismissed by or resigned from a party at least six (6) months prior to any solicitation or employment by the other party shall not be subject to the prohibition on solicitation and employment hereunder.

**Complete Understanding; Modification.** This Agreement (including all Exhibits hereto and any Project Change Request or Work Order hereafter entered into hereunder) constitutes the complete and exclusive agreement of the parties and supersedes all prior understandings and agreements, whether written or oral, with respect to the subject matter hereof. No modification of or amendment to this Agreement shall be effective unless in writing signed by both parties hereto.

**Severability.** In the event that any provision in this Agreement shall be found by a governmental authority or court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be construed and enforced as if it had been narrowly drawn so as not to be invalid, illegal or unenforceable, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

**Assignment.** Neither party shall assign this Agreement to any third party without the prior written consent of the other party; provided, however, that PSS may, without notice to or the consent of Customer, grant a security interest in this Agreement to a lender pursuant to a lending arrangement and/or assign this Agreement to any entity that at that time controls, is controlled by or is under common control with PSS. For purposes of this Agreement, "assignment" shall exclude: (i) the sale of all or substantially all of the assets of a party, (ii) a merger, consolidation or reorganization, or (iii) the sale or transfer of more than fifty (50%) of the voting stock (as measured by assuming all convertible securities converted into common stock) to an individual or entity or group of individuals or entities acting in concert that immediately prior to such sale or transfer did not own more than fifty percent (50%) of the then outstanding voting stock. Subject to the foregoing, the Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

**Notices.** Except where otherwise contemplated herein, all notices and other communications required to be provided hereunder shall be in writing and shall be deemed effective (i) upon receipt, when delivered by hand, (ii) three (3) business days after mailing when mailed by registered or certified mail (return receipt requested), postage prepaid, (iii) one(1) business day after deposit with a nationally-recognized overnight express mail service or (iv) upon "confirmed receipt" of facsimile, email or letter, in any such case to the parties at the addresses of each party (or at such other address for a party as shall be specified by like notice).

**Force Majeure.** Neither party shall be in breach or default under this Agreement or otherwise liable for any failure to perform or delay

in the performance of its obligations under this Agreement (other than its obligation to pay any monies owed hereunder) or for any losses hereunder resulting from a cause over which it does not have direct control, including, but not limited to, failure or unavailability of any third party or external facilities, software or services, failure or unavailability of any electronic or mechanical equipment, failure or unavailability of any third party or external communication lines, or telecommunications or telephone facilities or other interconnect problems, computer viruses, unauthorized access, theft, operator errors, severe weather, earthquakes, or natural disasters, strikes or other labor problems, wars, or governmental restrictions.

**Waiver.** No failure or delay on the part of any party in exercising any right hereunder, irrespective of the length of time for which such failure or delay shall continue, will operate as a waiver of, or impair, any such right. No single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. No waiver of any right hereunder will be effective unless given in a signed writing.

**Governing Law/Arbitration.** This Agreement shall be governed by the laws of the State of Tennessee and Shelby County, U.S.A. without regard to any provision that would make the laws of another jurisdiction applicable. All claims arising out of this Agreement shall be resolved exclusively by arbitration in accordance with the then current rules of the American Arbitration Association by a single arbitrator. The arbitrator shall not be authorized to award damages that are limited or prohibited by the terms of this Agreement. Any arbitration hereunder will be held in Memphis, Tennessee.


Cyberlock & Cyberkey Hosting & Maintenance			
Key Quantity		Annual Fee	Current Level
1 to 25	Cyberkeys, Web Hubs, USB Stations	\$450.00	
26 to 75	Cyberkeys, Web Hubs, USB Stations	\$750.00	
76 to 150	Cyberkeys, Web Hubs, USB Stations	\$1,050.00	x
151 to 300	Cyberkeys, Web Hubs, USB Stations	\$1,350.00	
301 to 600	Cyberkeys, Web Hubs, USB Stations	\$1,650.00	
601 to 1200	Cyberkeys, Web Hubs, USB Stations	\$1,950.00	
1201-2000	Cyberkeys, Web Hubs, USB Stations	\$2,350.00	
2001-3000	Cyberkeys, Web Hubs, USB Stations	\$2,650.00	

**Pricing**

**Customer: Kauai Department of Water**

**Annual Hosting & Maintenance Based on Equipment listed above: \$1050**

**Next Renewal Date: One year from implementation**

Peifer Access Solutions, LLC	Customer: Kauai Department of Water
By: 	By:
Name: Glen Peifer	Name:
Title: Partner	Title:
Date: 9/10/2019	Date: