MEMORANDUM OF AGREEMENT
ARTICLE XVIII, DISCIPLINARY ACTIONS

This Memorandum of Agreement is entered into, and effective as of the date shown below, between the University of Hawai‘i Professional Assembly (hereinafter “UHPA”), the State of Hawai‘i (hereinafter “State”), and the Board of Regents of the University of Hawaii (hereinafter “BOR”). UHPA, the State and BOR are hereinafter sometimes referred to collectively as the “Parties.”

WHEREAS, on January 16, 2010, the Parties entered into a successor collective bargaining agreement governing members of bargaining unit 7 faculty members of the University of Hawaii effective for the period July 1, 2009 through June 30, 2015 (hereinafter “2009 CBA”); and,

WHEREAS, the parties now wish to amend Article XVIII, Disciplinary Actions as shown in Exhibit A attached hereto and incorporated here by reference subject to the understandings and agreement stated below in Section 1.

NOW, THEREFORE, in consideration of the mutual promises contained herein the parties agree as follows:

1. Article XVIII, Disciplinary Actions, shall be superseded in its entirety by the provisions of Exhibit A, attached hereto and incorporated herein by reference subject to the following agreement of the Parties as to its interpretation and application:

   a. In the event a Chancellor is not available for any reasonable period including but not limited to vacancy, abolishment, illness, injury, vacation, business travel, or disability; or in the event the Chancellor determines that a conflict in interest exists, or may be perceived to exist, that may prevent the rendering of an impartial decision, and/or may materially delay performance of Article XVIII duties, the University of Hawaii President shall determine whether a designee is required to be appointed, and if so, shall appoint a designee to fulfill the requirements of a Chancellor’s duties under Article XVIII, Disciplinary Actions with notice to the Union.

   b. The Chancellor may appoint another University Executive to review an appeal and to submit a recommendation to the Chancellor, provided that the actual decision shall be made by the Chancellor or the University President’s designee under Section 1. a. above.

2. The Parties further agree that this Memorandum of Agreement resolves any and all prior or existing grievances, disputes, or challenges relating to the Chancellor’s duties under Article XVIII, Disciplinary Actions. UHPA agrees to withdraw with prejudice its pending grievance regarding the Chancellor’s obligations under Article XVIII.
3. This Memorandum of Agreement shall be effective January 1, 2011 and shall continue in effect until the Parties agree otherwise.

IN WITNESS WHEREOF, the parties hereto, by their authorized representative, have executed this Memorandum of Agreement.

STATE OF HAWAI'I
UNIVERSITY OF HAWAI'I
UNIVERSITY OF HAWAI'I
PROFESSIONAL ASSEMBLY

Chairperson, Board of Regents
Vice Chairperson, Board of Regents

Its Executive Director/Chief Negotiator

Vice President

President, University of Hawaii

Chief Negotiator, State of Hawaii

APPROVED AS TO FORM:

Attorney General
ARTICLE XVIII, DISCIPLINARY ACTIONS

A. GENERAL

The Employer shall not discharge, suspend, or reduce the compensation of any Faculty Member for disciplinary reasons, or take other actions of a disciplinary nature, except for proper cause and in accordance with the procedures set forth in this Article. All matters under this Article, including investigations, shall be considered confidential. Information pertaining to disciplinary actions may be subject to disclosure under the provisions of Section 92F, Hawaii Revised Statutes.

B. SUSPENSION OR DISCHARGE

1. If an Administrative Official believes that there is probable cause for the suspension or discharge of a Faculty Member, the Administrative Official shall make a statement in writing of the grounds and the discipline proposed and have such statement served upon the Faculty Member in person or by registered or certified mail to the Faculty Member's address of record. Once the charges in the written statement have been made they shall not be subject to additional charges unless the new charges are based on the discovery of new evidence. A copy of such statement shall also be sent to the Union.

2. The Faculty Member may file an answer to the statement with the Chancellor, within fifteen (15) calendar days. If the Faculty Member fails to answer within fifteen (15) calendar days, the Employer may proceed with the suspension or discharge, and such action shall be final and binding.

3. If the Faculty Member files an answer and disagrees with the statement, then the Chancellor may appoint a Disciplinary Advisory Committee to be composed in the manner described below. The purpose of the Committee is to provide the Chancellor with an evaluation of the substance of the allegations through a review of the evidence presented to the Committee by the Chancellor, but they are not charged with prosecuting the complaint or holding hearings. If a Committee is not formed, the Faculty Member shall have an opportunity to meet with the Chancellor.

If a Committee is formed, the Chancellor shall appoint a committee of five (5) members from the Faculty Personnel Panel established pursuant to Article XV of this Agreement. If the subject Faculty Member is from the Faculty of a Community College, a majority of the Committee shall be from the Community Colleges. If the Faculty Member is from a four-year (4-year) campus, a majority of the committee shall be from the campus. At least two (2) committee members shall be from the school or college of the Faculty Member. The Chancellor shall also appoint two (2) administrative personnel to work with the Committee. The Union shall be notified of the appointment and composition of the Committee.

The deliberations shall be conducted with the utmost discretion. The Committee shall, with due regard for the sensitive nature of its proceedings, provide the Faculty Member with written materials in its possession. If, during the course of the deliberations, additional grounds are considered by the Committee, written materials relevant to the new grounds shall be provided to the Faculty Member. The Committee shall proceed in an expeditious manner and conclude its deliberations and file a report with the Chancellor within thirty (30) calendar days after the matter has been referred to it. Additionally, members of the Committee may file individual reports with the Chancellor. The Chancellor shall provide a copy of the Committee report(s) to the Union and the Faculty Member either by personal delivery or by registered or certified mail. The Faculty Member may provide a response to the Chancellor within twenty (20) calendar days of the delivery or mailing of the report. The Chancellor shall render a decision on the matter after receiving the Faculty Member's response, if any.

4. If the Chancellor decides to proceed with the suspension or discharge of the Faculty Member, the Chancellor shall so notify the Faculty Member in writing and have such notice served upon the Faculty Member in person or by registered or certified mail.

5. The Faculty Member or the Union may then file a grievance at the level of the President or the President's designee (Step 2 of the Grievance Procedure) within fifteen (15) calendar days of the service of the decision of the Chancellor. If a grievance is not filed within fifteen (15) calendar
days, the Chancellor may proceed with the suspension or discharge, and such action shall be final and binding.

6. The Faculty Member shall not be suspended or discharged during the foregoing procedures, including the Grievance Procedure, except as provided in Paragraphs B.7 and B.8 below. However, the Chancellor may temporarily reassign the Faculty Member, or place the Faculty Member on administrative leave with pay, if the Chancellor believes that the Faculty Member's continuance may disrupt the operations of the University.

The Chancellor shall not reassign or place a Faculty Member on administrative leave on grounds of disruption of operations for more than thirty (30) days without either written consent of the Union, or having delivered a statement in writing of the grounds therefore to the Faculty Member and the Union.

7. The Faculty Member may be suspended without pay during the foregoing procedures where the Faculty Member has willfully failed to report for duty during the duty period as defined in Article V, Duty Period.

8. However, if a Faculty Member pleads guilty or no contest to, or is convicted of, a felony in a competent federal, state, or local court of law within the United States, the Employer may suspend without pay or discharge the Faculty Member if there is an adverse impact on the University or its operations. If the Employer proceeds to suspend or discharge the Faculty Member, the Employer shall make a statement in writing of the grounds and have such a statement served upon the Faculty Member. The Faculty Member may file an answer to the statement with the Chancellor within seven (7) calendar days after receipt of the notification. If the Faculty Member fails to answer within seven (7) calendar days, the Employer may proceed with the suspension without pay or the discharge.

If the Faculty Member files an answer and disagrees with the statement, the Chancellor shall consider the statement and meet with the Faculty Member if so requested. The Chancellor shall notify the Faculty Member, with a copy to the Union, of his or her decision within seven (7) calendar days after receipt of the Faculty Member's answer to the statement. Should the Chancellor decide to proceed with the discharge, the Faculty Member shall be suspended without pay until the grievance and arbitration procedures of Article XXIV have been exhausted.

The Faculty Member may file a grievance at Step 2 of the Grievance Procedures, set forth in Article XXIV, within fifteen (15) calendar days following receipt of the notification of the Chancellor's decision. Should the Faculty Member not file a grievance within the fifteen (15) calendar days, the decision of the Chancellor shall become final and binding.

If a Faculty Member's felony conviction is overturned on appeal, or the grievance is upheld, the Faculty Member shall be reinstated to the position which the Faculty Member held prior to the suspension or discharge action retroactively with full compensation, rights, and benefits as if the Faculty Member was never suspended or discharged.

C. OTHER DISCIPLINARY ACTIONS

Other disciplinary actions which do not involve suspension or discharge may be the subject of a grievance at the level of the Chancellor, appropriate Vice President, their successors in office, or their respective designee (Step 1 of the Grievance Procedure).