**State of Hawaii**

**PRE-NUPTIAL AGREEMENT**

**Background:**

This Pre-nuptial Agreement (the “Agreement”) is created and effective as of the [INSERT DATE] (the “Commencement Date”).

The Agreement is between:

1. [INSERT PARTY 1 DETAILS] (“Party 1”)
2. [INSERT PARTY 2 DETAILS] (“Party 2”)

Collectively the “Parties”.

The Parties agree to the following terms with the intention to be legally bound:

**Marriage:**

1. The Parties intend to marry each other on the [INSERT MARRIAGE DATE] (“Marriage”).
2. In advance of their Marriage, the parties wish to provide for their rights and obligations in and to each other’s assets and Property including that which each of the parties currently and separately own, that which each will acquire separately during the Marriage and that which both will acquire together during the Marriage, in the event that the Marriage is terminated.
3. Both Parties acknowledge that they have known and shared the intention to enter into this Agreement since [INSERT DATE] and they confirm that they have had adequate time to reflect on the terms of this Agreement and to obtain independent legal advice.

**Purpose:**

1. The purpose of this Agreement is to promote and encourage the Marriage rather than to facilitate its breakdown.
2. Both Parties agree to provide for their rights and obligations in each and the other assets and property.
3. Both Parties warrant that they have made a full, fair, and reasonable disclosure to the other of their financial information, in accordance with schedule 1 and 2.
4. They enter into this Agreement to record their respective, mutual, and agreed intentions in the event of the permanent breakdown of the Marriage on the basis of what each believes to be a fair outcome in that event.

**Personal Details of the Parties:**

1. [INSERT PARTY 1] is:
   1. A national of [INSERT NATIONALITY].
   2. [INSERT AGE] years old.
   3. [Employed by [INSERT EMPLOYER NAME AND ADDRESS]] OR [Self-employed as a [INSERT JOB DESCRIPTION] OR [Unemployed.] OR [INSERT OTHER].
2. [INSERT PARTY 2] is:
   1. A national of [INSERT NATIONALITY].
   2. [INSERT AGE] years old.
   3. [Employed by [INSERT EMPLOYER NAME AND ADDRESS]] OR [Self-employed as a [INSERT JOB DESCRIPTION] OR [Unemployed.] OR [INSERT OTHER].
3. The Parties have been in a relationship since [INSERT DATE] [and have cohabited with each other since [DATE]] and this has been taken into account in the financial provisions set out within this Agreement.
4. [Neither [INSERT PARTY 1] nor [INSERT PARTY 2] have been married before OR [[INSERT PARTY 1] OR [INSERT PARTY 2] has been married before and was divorced on [INSERT DATE]] OR [Both of the Parties have been married before. [INSERT PARTY 1] was divorced on [INSERT DATE] and [INSERT PARTY 2] was divorced on [INSERT DATE]].
5. The Parties currently have [no] OR [NUMBER]] child[ren] [with one another] [between them.] [PARTY 1] has [NUMBER] child[ren] from a previous relationship and [PARTY 2] has [NUMBER] child[ren] from a previous relationship].
6. [The Parties currently reside at [INSERT ADDRESS], a property owned [legally and] beneficially by [PARTY 1] [and] [PARTY 2] [solely] OR [as joint tenants] OR [as tenants in common in equal shares] OR [as tenants in common in unequal shares] [The Parties intend this property to be their home at the time of the Marriage.] OR

[INSERT PARTY 1] currently resides at [INSERT ADDRESS].

[INSERT PARTY 2] currently resides at [INSERT ADDRESS].

**Separate Property:**

1. The Parties agree that, except as provided for by this Agreement, neither Party will make any claim against the other's separate property.
2. Except as expressly agreed by the Parties or outlined with schedule 1-2, each Party shall retain their own separate property. This shall apply to property acquired prior to or during the Marriage.
3. Except as expressly provided for by this Agreement, the Parties shall have full control of their separate property and any income generated in respect of it without any interference from the other Party.
4. Unless otherwise agreed between the Parties in writing and signed, the following events will not in any circumstance be used as evidence of any intention of either Party that their separate property should be treated as Joint Property for the purposes of this Agreement:
   1. the filing of joint tax returns;
   2. the designation of one Party by the other as a beneficiary of his or her estate or as a trustee or as any other form of fiduciary;
   3. the expenditure of any funds for the benefit of the family, or joint expenditure;
   4. the co-mingling by one Party of his or her Separate Property with the Separate Property of the other Party;
   5. the making of any oral statement by either Party;
   6. the taking of a mortgage in joint names secured against one Party's Separate property; or
   7. [the joint occupation of a residence forming part of one Party's Separate Property.]

**Joint Property:**

1. Unless otherwise agreed in writing by the Parties or as outlined within schedules 1-2, the beneficial interest in any jointly owned property will be owned by the Parties in equal shares and considered as the spouse’s Community Property, irrespective of the proportions that each contributed to the acquisition of the joint property or to capital improvements, major repair works or refurbishment of the joint property.
2. The conversion of the party’s separate Property to Community Property is enforceable without the provision of consideration from the other Party.
3. Transferring the names of the separate property to both spouses’ names alone will not be sufficient to fulfil this requirement.

**Division of Marital Property:**

1. Upon termination of the Marriage, all marital property shall be divided in accordance with the law of Hawaii in equal proportions between the Parties, subject to the provisions of this Agreement.

**Business Ownership:**

1. Each Party shall have an equal division in any business that was jointly acquired by both Parties, and it shall be treated as Community Property that is jointly owned.
2. Upon termination of the Marriage ownership of the business shall be distributed to the Parties in equal proportions.
3. Any business owned by the Parties prior to Marriage, shall remain as the Party’s non-marital, separate property.

**Rights Waiver:**

1. Unless otherwise expressly stated, each Party agrees to waive and release any current or prospective claims they may acquire in the property or other assets of the other Party as a result of the Marriage, irrespective of whether they were acquired during or after the Marriage.
2. Each party agrees that they will obtain independent legal advice and take the additional steps necessary, following the Marriage, to waive their future spousal rights to their spouses’ pension rights in a company plan under the Employee Retirement Income Security Act 1974.

**Premarital Debts:**

1. Except as expressly provided for by this Agreement, each Party shall hold sole responsibility for their own separate and premarital debts. This also applies to any interest or other obligations acquired on the debt.
2. Each Party shall indemnify the other in respect of all expenses, including legal fees, in the event that a debt or obligation is asserted as a claim or demand against the other Party’s property.

**Debts acquired during marriage:**

1. Except as expressly provided for by this Agreement, all debts and obligations incurred during the Marriage by either Party, individually or jointly, shall be treated as marital debt and both Parties shall be equally responsible in respect of the debt.

**Division of Marital Debt:**

1. Upon termination of the Marriage, all marital debt shall be divided in accordance with the law of Hawaii in equal proportions between the Parties, subject to the provisions of this Agreement.

**Taxes:**

1. For the duration of their Marriage the Parties agree to file their taxes [jointly] OR [separately].
2. This Agreement does not waive the Parties’ right to report their income for federal or state income tax purposes jointly.
3. Electing to jointly file taxes shall not create any community property or any other rights or interests unless otherwise stated within this Agreement.
4. Each Party will continue to be liable for any and all taxes associated with their separate property. Federal gift tax laws and federal estate tax laws impacting the rights of spouses shall continue to apply independent of this Agreement.

**Housing Arrangements:**

INSERT IF UNARRANGED:

1. [Housing arrangements shall be agreed outside of this Agreement.] OR

INSERT IF PARTIES OWN THE HOME:

[The Parties residence shall be [INSERT ADDRESS] owned by [INSERT HOMEOWNER/S NAME].

INSERT IF HOME IS SEPARATE PROPERTY:

[The residence shall remain as the non-marital, separate property of [INSERT PARTY NAME] during and after the Marriage.] OR

INSERT IF HOME IS JOINT PROPERTY

[The residence shall be treated as marital property and owned equally by both Parties.]

INSERT IF ONE PARTY IS ENTITLED TO CONTINUE LIVING AT THE RESIDENCE:

1. [Upon termination of the Marriage, [INSERT PARTY NAME] shall have the right continue residing in the marital home for [INSERT TIMEFRAME] years following termination of the Marriage.]

**Household Expenses:**

1. [INSERT PARTY A NAME] shall be responsible for the payment of the following household expenses which shall be paid from their elected account:
   1. [INSERT HOUSEHOLD EXPENSES].
2. [INSERT PARTY B NAME] shall be responsible for the payment of the following household expenses which shall be paid from their elected account:
   1. [INSERT HOUSEHOLD EXPENSES].
3. Each Party shall share equal responsibility for the payment of the following household expenses, which shall be paid from a joint account that both parties regularly pay instalments into:
   1. [INSERT INSTALLMENTS].

[**PETS:**

1. Any pets that are separately owned by the Parties prior to their Marriage shall be considered as their separate property for the duration of the Marriage and following termination.
2. Upon termination of the Marriage, the original owner shall retain custody of the pet and the other Party will not be entitled to visitation rights.

INSERT IF SOLE CUSTODY TO ONE PARTY WITH NO VISITATION RIGHTS:

1. [[INSERT PARTY NAME] shall retain sole custody of any pets that are acquired during the Marriage, unless otherwise agreed in writing by the Parties.] OR

INSERT IF SOLE CUSTODY TO ONE PARTY WITH VISITATION RIGHTS:

[[INSERT PARTY NAME] shall retain sole custody of any pets that are acquired during the Marriage, unless otherwise agreed in writing by the Parties. [INSERT PARTY NAME] shall be entitled to visit the pet on a [INSERT TIMEFRAME] basis.] OR

INSERT IF PARTIES SHARE CUSTODY:

[Each Party shall have equal custody of any pets acquired during the Marriage, unless otherwise agreed in writing by the Parties. [[INSERT PARTY NAME] shall be responsible for the pet’s maintenance and care costs.] OR [Each Party shall contribute equally to the pet’s maintenance and care costs.]]

**Special Needs:**

INSERT IF CARING PARTY IS RESPONSIBLE FOR CARE:

1. [In the event that either Party becomes partially or totally disabled, the caring Party shall obtain full responsibility of obtaining any and all necessary care on behalf of the disabled Party.] OR

INSERT IF CARING PARTY IS NOT RESPONSIBLE FOR CARE

[In the event that either Party becomes partially or totally disabled, the other Party shall not obtain any responsibility in respect of the disabled party’s care.]

**Death:**

1. Upon the death of either Party, the surviving Party shall [not] be entitled to continue residing in the Parties marital property for the remainder of their lifetime, until death. This is subject to the terms contained within the respective property deed or In the Living Will and Testament of the deceased Party.
2. Upon the death of either Party, the surviving Party shall [not] be entitled to receive the personal property of the deceased Party. This is subject to the terms contained within the respective Last Will and Testament of the deceased Party.
3. The surviving Party acknowledges that any rights they may obtain in respect of the marital home or marital property shall be governed by the respective property deed unless otherwise agreed in writing.
4. Both Parties are entitled to name the other Party as a beneficiary in their last will and testament, life insurance policy or retirement plan. Such a transfer, bequest, or designation will take precedence over this Agreement.

**Children from Marriage:**

1. If the Parties share any children of the marriage, this Agreement will not affect the child’s rights to support from either or both Parties.

**Acknowledgment:**

1. Both Parties confirm that prior to entering into this Agreement, they have obtained independent legal advice regarding the terms of this Agreement, the effect it has on their rights and the advantages/disadvantages of entering into this Agreement.

**Termination:**

1. This Agreement may be terminated if both Parties sign a written agreement before the presence of a notary public or other authorized official.
2. Termination shall become effective when properly recorded as required by state and local laws and by providing notice in accordance with clause [INSERT NOTICE CLAUSE NUMBER].

**Notices:**

1. A notice given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post, recorded delivery or special delivery in each case to that party's address.

**No Variation and Waiver:**

1. No variation of this Agreement shall be effective unless it is in writing and signed by or on behalf of each party for the time being.
2. A waiver of any right or remedy under this Agreement or by law is only effective if it is given in writing and is signed by the party waiving such right or remedy. Any such waiver shall apply only to the circumstances for which it is given and shall not be deemed a waiver of any subsequent breach or default.

**Survival:**

1. This Agreement (other than obligations that have already been fully performed) remains in full force after the Marriage.
2. If any provision or part-provision of this Agreement is or becomes invalid, illegal, or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause [INSERT CLAUSE NUMBER] shall not affect the validity and enforceability of the rest of this Agreement.

**Entire Agreement:**

1. This Agreement (together with the documents referred to in it) constitutes the entire Agreement between the parties and supersedes and extinguishes all previous discussions, correspondence, negotiations, drafts, agreements, promises, assurances, warranties, representations, arrangements, and understandings between them, whether written or oral, relating to its subject matter.
2. Each party acknowledges that in entering into this Agreement (and any documents referred to in it), he does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement or those documents. Nothing in this clause [INSERT CLAUSE NUMBER] shall limit or exclude any liability for fraud.

**Assignment and Other Dealings:**

1. No party shall assign, transfer, mortgage, charge, subcontract, declare a trust over a deal in any other manner with any or all of his rights and obligations under this Agreement (or any other document referred to in it) without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed). Each party confirms that he is acting on his own behalf and not for the benefit of any other person.

**Third Parties:**

1. Except as expressly provided elsewhere in this Agreement, no one other than a party to this Agreement, its successors and permitted assignees, shall have any right to enforce any of its terms.

**Governing Law and Jurisdiction:**

1. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Hawaii. Each party irrevocably agrees that the courts of Hawaii have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

**Disputes:**

1. If a dispute arises under or in connection with this agreement (“Dispute”), including any Dispute arising out of any amount due to a party, then before bringing any legal proceedings or commencing any other alternative dispute resolution procedure in connection with such Dispute, a party must first give written notice (“Dispute Notice”) of the Dispute to the other party describing the Dispute and requesting that it is resolved under the dispute resolution procedure described in this clause [INSERT CLAUSE NUMBER]. Disputes arising under this agreement shall be resolved by: (Insert those that apply)
   * 1. [Bringing proceedings in the courts of Hawaii.]
     2. [Arbitration in accordance with the American Arbitration Association.]
     3. [Mediation. If the parties fail to come to an agreement by mediation, then it shall be resolved through arbitration.]

**Schedule 1**

**Schedule 2**

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the Commencement Date.

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**Party 1 Name Party 1 Signature**

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**Party 2 Name Party 2 Signature**

**NOTARY OF ACKNOWLEDGEMENT**

State of: Hawaii

Country of: USA

(**SEAL**)

This Pre-nuptial Agreement was acknowledged on the [INSERT DATE] by the undersigned, [INSERT UNDERSIGNED NAME], who has satisfactorily proven to me to be the person whose name is subscribed to this document.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Signature**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Notary Public**

**My Commission Expires on the:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_