

NOW, THEREFORE, in consideration of the promises contained in this Agreement, the UNIVERSITY and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the UNIVERSITY, provide all the services set forth in Attachment 1, which is hereby made a part of this Agreement.
2. Time of Performance. The services required of the CONTRACTOR under this Agreement shall be performed and completed in accordance with the "Time Schedule" set forth in Attachment 2, which is hereby made a part of this Agreement.
3. Compensation. The CONTRACTOR shall be compensated for services rendered and costs incurred under this Agreement in a total amount not to exceed _____
DOLLARS (\$ _____), including taxes, according to the "Compensation and Payment Schedule" set forth in Attachment 3, which is hereby made a part of this Agreement.
4. Standards of Conduct Declaration. The Standards of Conduct Declaration by CONTRACTOR, set forth in Attachment 4, is hereby made a part of this Agreement.
5. Notices. Any written notices required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid, to the UNIVERSITY at the DIRECTOR's office in Honolulu, Hawaii, at 1400 Lower Campus Road, Room 15, Honolulu, Hawaii 96822, or to the CONTRACTOR at the CONTRACTOR's address as indicated in the Agreement. A notice shall be deemed to have been received by the recipient THREE (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the UNIVERSITY in writing of any change of address.
6. Other Terms and Conditions. The General Conditions and the Special Conditions (if any) set forth in Attachments 5 and 6, respectively, are hereby made a part of this Agreement. The term "DIRECTOR" in the General Conditions shall be understood to refer to the UNIVERSITY's Director of Procurement Management. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

IN WITNESS WHEREOF, the UNIVERSITY and the CONTRACTOR have executed this Agreement effective as of the date first above written.

UNIVERSITY

By _____
Its Director of the Office of Procurement
Management

CONTRACTOR

By _____
Title _____ *

*Evidence of authority of the CONTRACTOR's representative to sign this Agreement for the CONTRACTOR must be attached.

CONTRACTOR'S ACKNOWLEDGMENT

State of _____)
_____) SS.
_____ County of _____)

On this _____ day of _____, _____, before me personally appeared _____, to me personally known, who being by me duly sworn, did say that he/she is the _____ of _____, the CONTRACTOR named in the foregoing instrument, and that he/she is authorized to sign said instrument in behalf of the CONTRACTOR, and acknowledges that he/she executed said instrument as the free act and deed of the CONTRACTOR.

Notary Public, _____

My commission expires: _____

SCOPE OF SERVICES

TIME OF PERFORMANCE

COMPENSATION AND PAYMENT SCHEDULE

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than FIFTY PERCENT (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges.

On behalf of _____,
CONTRACTOR, the undersigned does declare, under penalty of perjury, as follows:

1. CONTRACTOR (is) (is not) a legislator or an employee or a business in which a legislator or an employee has a controlling interest.*
2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.
3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a UNIVERSITY employee or, in the case of the Legislature, by a legislator.
4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the UNIVERSITY within the preceding TWO (2) years and who participated while in state office or employment on the matter with which the Agreement is directly concerned.
5. CONTRACTOR has not been represented or assisted on matters related to this Agreement, for a fee or other consideration by an individual who, within the past TWELVE (12) months, has been a UNIVERSITY employee, or in the case of the Legislature, a legislator.
6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, a) within the past TWELVE (12) months, served as a UNIVERSITY employee or in the case of the Legislature, a legislator, and b) participated while an employee or legislator on matters related to this Agreement.

CONTRACTOR understands that the Agreement to which this document is attached is voidable on behalf of the UNIVERSITY if this Agreement was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the UNIVERSITY.

DATED: _____, _____.

CONTRACTOR

By _____

Title _____

* Reminder to UNIVERSITY PROGRAM: If "is" is circled, YOUR PROGRAM is required, under Section 84-15, Hawaii Revised Statutes, to file with the State Ethics Commission, TEN (10) days before the Agreement is entered into, a written justification as to why the Agreement was not required to be competitively bid.

UNIVERSITY OF HAWAII
GENERAL CONDITIONS FOR
AGREEMENTS FOR SERVICES

1. Coordination of Services by the UNIVERSITY. The DIRECTOR, or the DIRECTOR's designee, shall coordinate the services to be provided by the CONTRACTOR in order to complete the Project. The CONTRACTOR shall maintain communications with the DIRECTOR, or the DIRECTOR's designee, at all stages of the CONTRACTOR's work, and submit to the DIRECTOR or the DIRECTOR's designee, for resolution, any questions which may arise as to the performance of this Agreement.

2. Relationship of Parties; Independent Contractor Status and Responsibilities, Including Tax Responsibilities.

a. In the performance of services, or delivery of goods, or both, required under this Agreement, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Agreement; however, the UNIVERSITY shall have a general right to inspect work in progress to determine whether, in the UNIVERSITY's opinion, the services are being performed or the goods are being provided, or both, by the CONTRACTOR in compliance with this Agreement. It is understood that the UNIVERSITY does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract, to provide services, or goods, or both to other individuals or entities while under contract with the UNIVERSITY.

b. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Agreement, agents or employees of the UNIVERSITY for any purpose, and the CONTRACTOR, and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the UNIVERSITY any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to UNIVERSITY employees.

c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of its performance under this Agreement. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR's employees or agents in the course of their employment.

d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.

e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, Hawaii Revised Statutes, and shall comply with all requirements thereof. The CONTRACTOR shall be solely responsible for meeting all requirements necessary to obtain the tax clearance certificates required for execution of the Agreement and for final payment under Sections 103-53 and 237-45, Hawaii Revised Statutes, and paragraph 19 of these General Conditions.

f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

3. Personnel Requirements.

a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Agreement.

b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Agreement, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Agreement, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Subcontracts and Assignments.

a. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR's duties, obligations, or interests under this Agreement without the prior written consent of the UNIVERSITY. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR's right to compensation under this Agreement shall be effective unless and until the assignment is approved by the Vice President for Budget and Finance and Chief Financial Officer of the University of Hawaii, as provided in Section 40-58, Hawaii Revised Statutes.

b. Recognition of a successor in interest. When in the best interest of the UNIVERSITY, a successor in interest may be recognized in an assignment agreement which the UNIVERSITY, the CONTRACTOR, and the assignee as transferee (hereinafter referred to as the "ASSIGNEE") shall agree that:

- (1) The ASSIGNEE assumes all of the CONTRACTOR's obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Agreement but waives all rights under this Agreement as against the UNIVERSITY, and
- (3) The CONTRACTOR shall continue to furnish, and the ASSIGNEE shall also furnish, all required bonds.

c. Change of name. When the CONTRACTOR requests to change the name in which the CONTRACTOR holds this Agreement with the UNIVERSITY, the DIRECTOR or the DIRECTOR's designee, shall, upon receipt of a document acceptable or satisfactory to the UNIVERSITY indicating such change of name (for example, as amendment to the CONTRACTOR's articles of incorporation), enter into an agreement with the CONTRACTOR to effect such a change of name. The agreement changing the CONTRACTOR's name shall specifically indicate that no other terms and conditions of this Agreement are thereby changed.

d. Reports. All change of name or novation agreements effecting changes of the CONTRACTOR's name or novations hereunder other than by the DIRECTOR or the DIRECTOR's designee shall be reported to the DIRECTOR or the DIRECTOR's designee within THIRTY (30) days of the date that the agreement becomes effective.

e. Actions affecting more than one department. Notwithstanding the provisions of subparagraphs 5a through 5d herein, when the CONTRACTOR holds agreements with more than one department of the UNIVERSITY, the novation or change of name agreements herein authorized shall be processed only through the Office of Procurement Management.

6. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Agreement.

7. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR's performance of this Agreement.

8. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the UNIVERSITY, the State of Hawaii, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

9. Modification of Agreement. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement shall be made only by written amendment to this Agreement, signed by the CONTRACTOR and the UNIVERSITY, provided that change orders shall be made in accordance with paragraph 10 herein.

10. Change Order.

a. The DIRECTOR, or the DIRECTOR's designee, may, by a written order, signed only by the UNIVERSITY, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Agreement in any one or more of the following:

- (1) Drawings, designs or specifications, if the goods or services, or both, to be furnished are to be specially provided to the UNIVERSITY in accordance therewith;
- (2) Method of delivery; or
- (3) Place of delivery.

b. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR's cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed by the order, an adjustment shall be made and the Agreement modified in writing accordingly. Any adjustment in contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Agreement. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Agreement as changed, provided that the DIRECTOR, or the DIRECTOR's designee, promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

c. Time period for claim. Within TEN (10) days after receipt of a written change order under subparagraph 10b, unless the period is extended by the DIRECTOR in writing, the CONTRACTOR shall file notice of intent to assert a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.

d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written notice is not given prior to final payment under this Agreement.

e. Other claims not barred. In the absence of a change order, nothing in this paragraph shall be deemed to restrict the CONTRACTOR's right to pursue a claim under the Agreement or for breach of contract.

11. Price Adjustment.

a. Price adjustment. Any adjustment in Agreement price pursuant to a provision in this Agreement shall be made in one or more of the following ways:

- (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (2) By unit prices specified in the Agreement or subsequently agreed upon;

- (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Agreement or subsequently agreed upon;
- (4) In such other manner as the parties may mutually agree; or
- (5) In the absence of agreement between the parties, by a unilateral determination by the DIRECTOR of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the UNIVERSITY in accordance with generally accepted accounting principles.

b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments.

12. Suspension of Agreement. The UNIVERSITY reserves the right at any time and for any reason to suspend this Agreement for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

a. Order to stop performance. The DIRECTOR may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Agreement. This order shall be for a specified period not exceeding SIXTY (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Agreement at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the DIRECTOR shall either:

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Agreement.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or Agreement price, or both, and the Agreement shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR's cost properly allocable to, the performance of any part of this Agreement; and
- (2) The CONTRACTOR asserts a claim for such an adjustment within THIRTY (30) days after the end of the period of performance stoppage; provided that, if the DIRECTOR decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in Agreement price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Agreement.

13. Disputes

All disputes arising under or related to this contract shall be resolved in accordance with this clause:

a. A claim by the CONTRACTOR shall be made, in writing, and submitted to the DIRECTOR for a written decision.

b. The DIRECTOR shall render a decision within NINETY (90) days of the request, subject to reasonable extension on a showing of good cause. The finding and decision shall be written and shall be furnished to the CONTRACTOR providing evidence of receipt.

c. The decision shall be in accordance with University Administrative Procedure A8.275. The DIRECTOR's decision shall be final.

14. Claims Based on the DIRECTOR's Actions or Omissions.

a. Changes in scope. If any action or omission on the part of the UNIVERSITY's procurement official(s), requiring performance changes within the scope of the Agreement constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Agreement in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) Written notice required. The CONTRACTOR shall have given written notice to the DIRECTOR:
 - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
 - (B) Within THIRTY (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
 - (C) Within such further time as may be allowed by the DIRECTOR in writing.
- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The DIRECTOR, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the DIRECTOR;
- (3) Basis must be explained. The notice required by subparagraph 14a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the DIRECTOR within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the UNIVERSITY, justifying the claimed additional costs or an extension of time in connection with such changes.

b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or law precluding any UNIVERSITY officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Agreement.

c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Agreement.

15. Confidentiality of Material.

a. All material given to or made available to the CONTRACTOR by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the UNIVERSITY.

b. All information, data, or other material provided by the CONTRACTOR to the UNIVERSITY shall be subject to the Uniform Information Practices Act, chapter 92F, Hawaii Revised Statutes.

16. Ownership Rights and Copyright. The UNIVERSITY shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement, and all such material shall be considered "works made for hire." All such material shall be delivered to the UNIVERSITY upon expiration or termination of this Agreement. The UNIVERSITY, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement.

17. Publicity. The CONTRACTOR shall not refer to the UNIVERSITY, or any office, agency, or officer thereof, including the DIRECTOR, or to the services provided under this Agreement, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts to the CONTRACTOR about the Project or this Agreement shall be referred to the DIRECTOR.

18. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Agreement shall be consistent with the following guidelines:

a. Reimbursement for interisland air transportation shall be for actual cost only.

b. Reimbursement for air transportation between Hawaii and out-of-state locations shall not exceed the lesser of actual cost and coach class air fare. In the event travel in a higher class will result in an overall cost savings to the UNIVERSITY, and with prior written approval of the DIRECTOR, fares in excess of coach class may be reimbursed.

c. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.

d. Unless prior written approval of the DIRECTOR is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for interisland or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

19. Payment Procedures; Final Payment; Tax Clearance. All payments under this Agreement shall be made only upon submission by CONTRACTOR of invoices specifying the amount due and certifying that (i) services requested under the Agreement have been performed by CONTRACTOR according to the Agreement, or (ii) the goods have been accepted by the UNIVERSITY, or (iii) both. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, Hawaii Revised Statutes. Further, all payments shall be made in accordance with and subject to chapter 40, Hawaii Revised Statutes. Final payment under this Agreement shall be subject to Sections 103-53 and 237-45, Hawaii Revised Statutes, which require a valid tax

clearance, FORM A-6, from the State of Hawaii, Department of Taxation, and the Internal Revenue Service (IRS), showing that all tax returns due have been filed, and all taxes, interest, and penalties levied or accrued under the provisions of Title 14 that are administered by the Department of Taxation and under the Internal Revenue Code against the CONTRACTOR have been paid.

20. Termination for Default.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement, or any extension thereof, otherwise fails to timely satisfy the Agreement provisions, or commits any other substantial breach of this Agreement, the DIRECTOR may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in TEN (10) days or any longer time specified in writing by the DIRECTOR, such officer may terminate the CONTRACTOR's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the DIRECTOR may, if possible, procure similar goods or services, or both, in a manner and upon the terms deemed appropriate by the DIRECTOR. The CONTRACTOR shall continue performance of the Agreement to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services, or both.

b. CONTRACTOR's duties. Notwithstanding termination of the Agreement and subject to any directions from the DIRECTOR, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the UNIVERSITY has an interest.

c. Compensation. Payment for completed services or goods, or both, delivered to and accepted by the UNIVERSITY shall be at the price set forth in the Agreement. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and UNIVERSITY; if the parties fail to agree, the DIRECTOR shall set an amount consistent with the CONTRACTOR's rights under the Agreement. The UNIVERSITY may withhold from amounts due the CONTRACTOR such sums as the DIRECTOR deems to be necessary to protect the UNIVERSITY against loss because of outstanding liens or claims of former lien holders and to reimburse the UNIVERSITY for the excess costs incurred in procuring similar goods and services.

d. Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the DIRECTOR within FIFTEEN (15) days after the cause of the delay and the failure arises out of [unforeseen] causes such as: acts of God; acts of a public enemy; acts of the UNIVERSITY and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the services or goods, or both, to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Agreement. Upon request of the CONTRACTOR, the DIRECTOR shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR's progress and performance would have met the terms of the Agreement, the delivery schedule shall be revised accordingly, subject to the rights of the UNIVERSITY under this Agreement. As used in this paragraph, the term 'subcontractor' means subcontractor at any tier.

e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR's right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 20d, 'Excuse for nonperformance or delayed performance,' the rights and obligations of the parties shall, if the Agreement contains a provision providing for termination for convenience of the UNIVERSITY, be the same as if the notice of termination had been issued pursuant to such provision. If, in the foregoing circumstances, this Agreement does not contain a

provision providing for termination for convenience of the UNIVERSITY, this Agreement shall be adjusted to compensate for such termination and the Agreement modified accordingly.

f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Agreement.

21. Termination for Convenience.

a. Termination. The DIRECTOR may, when the interests of the UNIVERSITY so require, terminate this Agreement in whole or in part, for the convenience of the UNIVERSITY. The DIRECTOR shall give written notice of the termination to the CONTRACTOR specifying the part of the Agreement terminated and when termination becomes effective.

b. CONTRACTOR's obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance. The DIRECTOR may direct the CONTRACTOR to assign the CONTRACTOR's right, title, and interest under terminated orders or subcontracts to the UNIVERSITY. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

c. Right to goods and work product. The DIRECTOR may require the CONTRACTOR to transfer title and deliver to the UNIVERSITY in the manner and to the extent directed by the DIRECTOR:

- (1) Any completed goods or work product; and
- (2) The partially completed work product, goods, materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Agreement.

The CONTRACTOR shall, upon direction of the DIRECTOR, protect and preserve property in the possession of the CONTRACTOR in which the UNIVERSITY has an interest. If the DIRECTOR does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the UNIVERSITY has breached the Agreement by exercise of the termination for convenience provision.

d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, bearing on such claim. If the CONTRACTOR fails to file a termination claim within ONE (1) year from the effective date of termination, the DIRECTOR may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 21d(3) below.
- (2) The DIRECTOR and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Agreement price plus settlement costs reduced by payments previously made by the UNIVERSITY, the proceeds of any sales of goods and manufacturing materials under subparagraph 21(c) and the Agreement price of performance not terminated.

- (3) Absent complete agreement under subparagraph 21d(2), the DIRECTOR shall pay CONTRACTOR the following amounts, provided payments agreed to under subparagraph 21d(2) shall not duplicate payments under this subparagraph 21d(3) for the following:
- (A) Agreement prices for goods or services accepted under the Agreement;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services, or both; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Agreement would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to this subparagraph 21b. These costs must not include costs paid in accordance with subparagraph 21d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement of claims and supporting data with respect to the terminated portion of the Agreement and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Agreement. The total sum to be paid the CONTRACTOR under this paragraph shall not exceed the total Agreement price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 21d(2), and the Agreement price of performance not terminated.

22. Federal Funds. If this Agreement is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Agreement to be payable from federal funds, the CONTRACTOR shall be paid only from such federal funds received from the federal government, and shall not be paid from any other funds.

23. Governing Law. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

24. Severability. In the event that any provision of this Agreement 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 Agreement.

25. Waiver. The failure of the UNIVERSITY to insist upon the strict compliance with any term, provision or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the UNIVERSITY's right to enforce the same in accordance with this Agreement.

26. Antitrust Claims. The UNIVERSITY and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the

CONTRACTOR hereby assigns to UNIVERSITY any and all claims for overcharges as to goods and materials purchased in connection with this Agreement, except as to overcharges which result from violations commencing after the price is established under this Agreement and which are not passed on to the UNIVERSITY under an escalation clause.

27. Minimizing Congestion. The CONTRACTOR shall undertake all necessary precautions to minimize any adverse impact the performance under this Agreement may have on traffic congestion.

28. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 20 (Termination for Default) and fails to cure in the time specified, the CONTRACTOR shall be liable for damages for delay in the amount, if any, set forth in this Agreement per calendar day from the date set for cure until either (i) the UNIVERSITY reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR's delay or nonperformance is excused under paragraph 20d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR shall remain liable for damages caused other than by delay.

29. Liens and Warranties. Goods provided under this Agreement shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in Attachment 1, whichever is greater.

30. Changes in Cost-reimbursement Agreement. If this Agreement is a cost-reimbursement Agreement, the following provisions shall apply:

a. The DIRECTOR may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Agreement in any one or more of the following:

- (1) Description of performance;
- (2) Time of performance (i.e., hours of the day, days of the week, etc.);
- (3) Place of performance of services;
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the UNIVERSITY in accordance with the drawings, designs, or specifications;
- (5) Method of shipment or packing of supplies; or
- (6) Place of delivery.

b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance, of any part of the performance under this Agreement, whether or not changed by the order, or otherwise affects any other terms and conditions of this Agreement, the DIRECTOR shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Agreement accordingly.

c. The CONTRACTOR must assert the CONTRACTOR's rights to an adjustment under this provision within THIRTY (30) days of the receipt of the written order. However, if the DIRECTOR decides that the facts justify it, the DIRECTOR may receive and act upon a proposal submitted before final payment under the Agreement.

d. Failure to agree to any adjustment shall be a dispute under paragraph 13. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Agreement as changed.

e. Notwithstanding the terms and conditions of subparagraphs 31a and 31b, the estimated cost of this Agreement and, if this Agreement is incrementally funded, the funds allotted for the performance of this Agreement, shall not be increased or considered to be increased except by specific written modification of the Agreement indicating the new Agreement estimated cost and, if this Agreement is incrementally funded, the new amount allotted to the Agreement.

31. Equal Opportunity and Affirmative Action Certification. The Contractor (contractor or subcontractor) agrees that the equal opportunity clause prohibiting discrimination on the basis of race, color, religion, sex or national origin, and the affirmative action requirements of Executive Order 11246, as amended, and implementing regulations at 41 CFR 60 are incorporated by reference in each non-exempt contract, subcontract, or purchase order, which is presently existing or may be entered into hereafter, between the Contractor and the University of Hawaii. The Contractor agrees to perform the applicable obligations of the equal opportunity clauses, as amended, covering race, color, religion, sex or national origin, (41 CFR 60-1.4), protected veterans [41 CFR 60-300.5(a)] and individuals with disabilities [41 CFR 60-741.5(a)]. **This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a). These regulations prohibit discrimination against qualified protected veterans and qualified individuals on the basis of disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.** In addition, each contract, subcontract, or purchase order shall also prohibit discrimination on the basis of gender identity and expression, age, ancestry, citizenship, genetic information, marital status, breastfeeding, income assignment for child support, arrest and court record, sexual orientation, national guard absence, and domestic or sexual violence victim status as required by federal and state laws. The Contractor agrees to comply with 29 CFR Part 471, Appendix A to subpart A. The Contractor agrees to indemnify and hold harmless the University from any claims or demands with regard to the Contractor's compliance with these provisions.

SPECIAL CONDITIONS