

## SPECIAL CONDITIONS

The General Conditions are attached to and made a part of this contract. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

- I. Annual Performance Audits. In addition to the requirements under this Contract, CONTRACTOR shall submit a financial audit and report upon request by the STATE. The audit shall be conducted by a certified public accounting firm and shall contain information specific to funds received under this Contract. The audit shall include recommendations to address any problems found.
  
- II. Insurance and Indemnity Requirements. The CONTRACTOR shall maintain insurance acceptable to the STATE in full force and effect throughout the term of the Contract. The policies of insurance maintained by the CONTRACTOR shall provide the following minimum coverage:

<u>Coverage</u>	<u>Limits</u>
<b>General Liability Insurance</b> (occurrence form)	<u>Bodily Injury and Property Damage (combined single limit):</u> \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate  <u>Personal Injury:</u> \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate
<b>Automobile Insurance</b> Covering all owned, non-owned, and hired automobiles	<u>Bodily Injury:</u> \$1,000,000.00 per accident  <u>Property Damage:</u> \$1,000,000.00 per accident
<b>Workers Compensation</b> (statutory limit as required by laws of the State of Hawaii)	Insurance to include Employer's Liability. Such coverage shall apply to all employees of the CONTRACTOR and, in case any subcontractor fails to provide adequate similar protection for its employees, to all employees of subcontractors

**Builder's Risk Insurance**

As applicable while construction work is being performed

- A. A certificate of liability insurance shall be submitted to the STATE by the CONTRACTOR. The certificate shall include the following provisions:
1. The State and its officers and employees are Additional Insureds.
  2. The CONTRACTOR's policy shall be primary and the STATE's policy will be in excess of and not contribute to the CONTRACTOR's policy.
  3. The coverages being certified will not be cancelled or materially changed without giving the STATE at least 30 days prior written notice by registered mail.
- B. The State of Hawaii, Department of Human Services (DHS), its elected and appointed officials, officers and employees shall be named as additional insured, except for Professional Liability Insurance and Worker's Compensation Insurance, as respects to operations performed for the State of Hawaii under this Contract. The CONTRACTOR agrees to keep such insurance in effect, and the certificate(s) therefore on deposit with the DHS during the entire term of this Contract. Upon request by the DHS, the CONTRACTOR shall furnish a copy of the policy or policies.
- C. Waiver of Subrogation in favor of the State of Hawaii shall also be included for the General Liability and Automobile Liability policies. CONTRACTOR shall endorse such policies to a waiver of any right to subrogation against the State of Hawaii and their respective employees and agents by each insurer under each required policy described herein. When required by the insurer or should a policy condition not permit the CONTRACTOR to enter into a pre-loss agreement to waive subrogation without an endorsement, CONTRACTOR shall notify the insurer and request that the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should the CONTRACTOR enter into such an agreement on a pre-loss basis.
- D. Failure of the CONTRACTOR to provide and keep in force such insurance shall be regarded as material default under this Contract. The STATE shall be entitled to exercise any or all of the remedies provided in this Contract for default of the CONTRACTOR.

- E. The procuring of such required policy or policies of insurance shall not be construed to limit the CONTRACTOR's liability or to fulfill the indemnification provisions and requirements of this Contract. Notwithstanding said policy or policies of insurance, the CONTRACTOR shall be liable for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Contract.
  - F. The CONTRACTOR shall immediately provide written notice to the contracting department or agency should any of the insurance policies identified on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.
  - G. The Department of Human Services is a self-insured State agency. The CONTRACTOR's insurance shall be primary. Any insurance maintained by the State of Hawaii shall apply in excess of and shall not contribute with insurance provided by the CONTRACTOR.
  - H. To satisfy the minimum coverage limits required by this Contract, the CONTRACTOR may use an umbrella policy in addition to the mandatory insurance policies (i.e., General Liability Insurance, Automobile Insurance, and Workers' Compensation) provided that the DHS approves, and the umbrella policy follows the underlying coverage forms.
  - I. CONTRACTOR agrees that CONTRACTOR shall do either of the following:
    - 1. Include all subcontractors as insured under all insurance set forth in this Contract and the General Conditions; or
    - 2. Cause each subcontractor hired by CONTRACTOR to purchase and maintain insurance of the types specified herein (General Liability and Automobile Liability at the limits specified above. CONTRACTOR shall also ensure that the State of Hawaii is added as an additional insured on the subcontractors' General Liability and Automobile Liability policies. CONTRACTOR shall obtain and maintain evidence of each subcontractor's insurance and if requested by the STATE, SUBCONTRACTOR shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.
- III. Specialty Contractor's and Subcontractor's License. The CONTRACTOR shall be solely responsible to ensure that all the specialty licenses required to perform the subject work are provided by the CONTRACTOR or its subcontractor(s) or joint Contractors. All required specialty licenses shall be current and valid.
- IV. Progress Payment for Stored Materials. Reserved.

- V. Deduction for Uncorrected Work. If the STATE deems it inexpedient to require the CONTRACTOR to correct or remove and replace work that the STATE has rejected in writing as defective or not conforming to the requirements of the Contract, the STATE reserves the right to correct or remove and replace said defective or nonconforming work, at the CONTRACTOR's expense, and to deduct the cost from the Contract price without further notice to the CONTRACTOR or surety and without termination of the Contract.
- VI. Liquidated Damages. Liquidated Damages shall be assessed in the amount of ONE HUNDRED DOLLARS AND NO/100 (\$100.00) for each calendar day that the CONTRACTOR fails to perform in whole or in part any of its obligations. Liquidated damages may be deducted from any payments due or to become due to the CONTRACTOR.
- VII. Interchangeable Terms. The following terms shall be one and the same:
- A. "Contract" and "Agreement."
  - B. "DHS" and "State."
  - C. "CONTRACTOR" and "[CONTRACTOR'S BUSINESS NAME OR DBA]."
- VIII. Contract Administration Pursuant to Section 103-55.6, HRS. Reserved.
- IX. Applicability of Chapter 103B, HRS. The provisions established in Chapter 103B, HRS shall apply to this Contract.
- X. Closeout Submittals. The CONTRACTOR shall provide all close out documents, including without limitation, warranties, Operation and Maintenance Manuals, within 60 days of substantial completion.
- XI. Signing in Counterpart and Electronic Signature. This Contract may be executed in counterparts, each of which shall be deemed original, but all of which, together, shall constitute one instrument. This Contract may also be executed by digital signature.
- XII. Additional Material and Documentation. Upon request from the STATE, CONTRACTOR shall submit any additional materials and documentation reasonably required by the STATE for evaluating CONTRACTOR's and any subcontractor's performance.
- XIII. Right to Inspection and Audit of Books and Records of CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor, which are related to the cost or pricing data, and a state contract,

including sub-contracts. The STATE shall have the general right to inspect work in progress to determine whether, in the STATE's opinion, the services are being performed by CONTRACTOR and its subcontractor in compliance with this Contract.

- XIV. Notice of Litigation. CONTRACTOR shall promptly notify the STATE in the event CONTRACTOR becomes aware of any actual litigation in which it is a party in a case, which involves services provided under this Contract. CONTRACTOR shall promptly, after being served with a summons, complaint, or other pleading which has been filed in any federal or state court or administrative agency, deliver copies of such document(s) to the STATE. The term "litigation" includes but is not limited to an assignment for the benefit of creditors and filings in bankruptcy, reorganization or foreclosure.
- XV. Authority. Each party has full power and authority to enter into and perform this Contract, and the person signing this Contract on behalf of each party certifies that such person has been properly authorized and empowered to enter into this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.