

SPECIAL PROVISIONS
Attachment 3

1. REPRESENTATIVE OF THE RCUH

The Technical Representative for RCUH is March Matsuura, Sr. Smart Grid Program Manager, University of Hawai'i, Hawai'i Natural Energy Institute, (808) 956-5070.

2. EXAMINATION OF PLANS AND SPECIFICATIONS

The Contractor shall examine carefully the plans, specifications, and contract forms. By signing this Agreement, the Contractor certifies an understanding as to the conditions to be encountered, as to the character, quality and quantities of work to be performed, and labor, material, and equipment to be furnished, and as to the requirements of the specifications. No additional compensation will be granted because of the lack of knowledge or misunderstanding of all the requirements of the work to be accomplished.

3. CONDITIONS AT SITE

The Contractor is aware or satisfied as to the character and amount of work to be performed as called for by the specifications. No additional allowance will be granted because of lack of knowledge of such conditions.

4. INSURANCE

Contractor shall maintain General Liability insurance acceptable to the RCUH in full force and effect throughout the term of this contract. The policy or policies of insurance maintained by the Contractor shall provide Combined Single Limit Coverage (bodily injury and property damage) in the amount of \$1,000,000 per occurrence and \$2,000,000 per project aggregate. Insurance shall be in force the first day of the term of this contract.

Each insurance policy required by this Agreement shall contain the following two (2) clauses:

- a. "It is agreed that any insurance maintained by the RCUH will apply in excess of, and not contribute with, insurance provided by this policy."
- b. "The University of Hawaii and RCUH are added as additional insureds with respect to operations performed for the University of Hawaii and RCUH."

Clauses a and b are waived for any professional liability/errors and omissions liability insurance.

The Contractor is required to notify RCUH of any changes to the Contractor's insurance policies or any cancellation of insurance at least THIRTY (30) days prior to the change or cancellation.

Workers' Compensation Insurance – The Contractor shall obtain workers' compensation insurance for all persons whom they employ in carrying out the work under this contract.

All insurance described herein shall be primary and cover the insured for all work to be performed under the contract, all work performed incidental thereto or directly or indirectly connected therewith, including traffic detour work or other work performed outside the work area and all change order work.

The Contractor agrees to deposit with the RCUH, on or before the effective date of this contract, certificates of insurance necessary to satisfy the RCUH that the insurance provisions of this Agreement have been complied with and to keep such insurance in effect and the certificates therefore on deposit with the RCUH during the entire term of this contract.

The RCUH shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of the RCUH, the insurance provisions in this Agreement do not provide adequate protection for the RCUH, the RCUH may require the Contractor to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The RCUH's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of the risks which exist at the time a change in insurance is required.

The RCUH shall notify the Contractor in writing of changes in the insurance requirements; and if the Contractor does not deposit copies of acceptable insurance policies with the RCUH incorporating such changes within SIXTY (60) days of receipt of such notice, this Agreement shall be in default without further notice to the Contractor and the RCUH shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit the Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this contract. Notwithstanding said policy or policies of insurance, the Contractor shall be obligated for the full and total amount of any damage, injury, or loss arising from its acts or omissions with respect to this contract.

5. INTENT OF PLANS AND SPECIFICATIONS

It is intended that the plans and specifications shall include all work necessary for the proper completion of the work. The Contractor shall comply with the obvious intent and meaning of these specifications which shall be construed to include all labor and materials, measures and modes of work necessary to complete work herein specified in a workmanlike manner and to the satisfaction of the RCUH. In case of any discrepancy in the plans and specification, the matter shall be immediately submitted to the RCUH without whose decision said discrepancy shall not be adjusted by the Contractor.

6. PERMITS AND LICENSES

The Contractor shall obtain and pay for all necessary permits and licenses, and give all notices required for the execution of the work.

7. LAWS AND REGULATIONS

This is a federal funded construction contract and as such is governed by applicable federal law and regulations. The following will apply ***if applicable***:

Copeland "Anti-Kickback" Act (18 U.S.C.874 and 40 U.S.C. 276c) –The Act provides that each contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled.

Rights to Inventions Made Under a Contract or Agreement – Rights to any invention resulting under this Agreement shall be governed by 37 CFR part 401.

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) – The contractor shall sign a certification attesting to their compliance with the cited law prior to execution of an agreement.

Debarment and Suspension (E.O.s 12549 and 12689) – The contractor shall sign a certification attesting to the compliance with the cited Executive Order(s) prior to execution of a contract.

By signing this Agreement, the Contractor certifies that the statutes have been read and are understood. If applicable, the Contractor shall comply with the provisions and acknowledges any rights the RCUH has under these laws.

The Contractor further agrees that the U.S. Comptroller General, University of Hawaii, RCUH, or any of their duly authorized representatives shall have access to, and the right to inspect or audit any directly pertinent books, documents, papers and records of the Contractor or any Subcontractor involving transactions related to this contract.

8. WORKING DIRECTIVES

The Contractor shall perform all work with extreme care to avoid damage to existing construction and installations. The existing building will be in use during the construction period. The Contractor shall make all necessary provisions to keep interferences to a minimum as to the scheduling of work and storage of materials. Scheduling and performance of work shall be done in such a manner as to cause the least possible inconvenience to personnel using the building and least possible interferences with the activities in and around the building.

9. REMOVAL OF DEFECTIVE NON-CONFORMING AND UNAUTHORIZED WORK

All work which has been rejected as not conforming to the requirements of this Agreement shall be remedied or removed and replaced by the Contractor in an acceptable manner and no compensation will be allowed for such removal or replacement. Any work done beyond the work specified in this Agreement, or any additional work done without the written authority of RCUH, will be considered as unauthorized and will not be paid for. Work so done may be ordered removed at the Contractor's expense.

Scheduling Corrective Work – The Contractor shall perform its corrective or remedial work at the convenience of the RCUH and shall obtain the RCUH's approval of its schedule.

Failure to Correct Work – If the Contractor fails to promptly commence to correct any defects of any nature within TEN (10) calendar days of any written order of the RCUH made under this clause, and thereafter to expeditiously complete the correction of said defects, the RCUH shall have the authority, without further notice to the Contractor or surety and without termination of this Agreement, to cause defective work to be remedied or removed and replaced, and unauthorized

work to be removed, at the Contractor's expense, and to deduct the costs from the monies due or to become due the Contractor under the contract.

10. WORKMANSHIP AND CHARACTER OF WORKERS

All work to be executed shall be of the highest quality and performed by skilled workmen in the best workmanlike manner. Any worker employed on the project by the Contractor or by any Subcontractor who the RCUH deems incompetent, careless, insubordinate, or otherwise objectionable shall at the written request of the RCUH, be removed forthwith by the Contractor or Subcontractor employing such worker and shall not be employed again in any portion of the work without the written consent of the RCUH. Should the Contractor or Subcontractor continue to employ, or again employ such person or persons on the project, the RCUH may withhold all payments which are or may become due, or the RCUH may suspend the work until its orders are followed, or both.

11. SUPERVISION OF WORK

The Contractor shall provide a competent superintendent, satisfactory to the RCUH, on the work at all times during progress of the work with authority to act for the Contractor. The Contractor shall also provide an adequate staff to coordinate and expedite its work properly and shall at all times maintain competent supervision of its work and that of its Subcontractors to ensure compliance with contract requirements.

12. MODIFICATION OF CONTRACT

This Agreement may be modified with mutual written agreement of the parties, by a Change Order and Amendment, which includes administrative and non-substantive changes.

13. PROTECTION OF PERSONS AND PROPERTY

The Contractor shall provide adequate, clearly marked and/or lighted barricades or warning signs at all open trenches, excavation, and contract work areas for the protection of the work and safety of the users and the public.

14. PROTECTION OF PROPERTY AND BUILDINGS

The Contractor shall take all necessary precautions during the progress of the work to protect the buildings as well as adjoining property, roadways, walkways, trees, lawns, landscape, and buildings from damage and injury and shall promptly repair any such damage to the satisfaction of the RCUH, at no cost to the RCUH.

15. MONITORING OF WORK

An inspector, designated by RCUH's representative will make daily observation of the work at the site. The Contractor shall direct all inquiries, technical or administrative, to said inspector during construction.

16. REMOVAL OF DEBRIS AND CLEANUP

The Contractor shall, as directed during the progress of the work, remove and properly dispose of resultant dirt and debris and keep the premises reasonably clear. Before the work shall be considered completed, all equipment and unused materials provided for the work shall be removed and the building and premises will be in a neat and broom-clean condition.

17. INSPECTION

All materials, equipment and workmanship shall be subject to inspection at any and all times during the period of installation. The RCUH has the right to reject defective or non-conforming material, equipment, and workmanship. Rejected materials and equipment shall be promptly removed from the job site and satisfactorily replaced. Rejected workmanship shall be satisfactorily corrected.

18. ACCEPTANCE

Upon completion of the job, the Contractor shall notify the RCUH in writing, to arrange for final inspection and acceptance. Final payment will not be made until acceptance of work by the RCUH.

19. GUARANTEE OF WORK

- A. Except as otherwise specified in this Agreement, all work shall be guaranteed by the Contractor against defects resulting from the use of defective or inferior materials, equipment, or workmanship for ONE (1) year from the date of final project acceptance.
- B. If, within any guarantee period, repairs, replacements, or modifications are required as a result of the use of any materials, equipment, or workmanship which is inferior, defective, or not in accordance with the terms of this contract, the Contractor shall within FIVE (5) consecutive working days and without expense to the RCUH:
 - 1) Take corrective action to cure all defects identified by the RCUH; and
 - 2) Repair all damage to RCUH or University property occasioned by the defective condition. If any such property cannot be satisfactorily repaired or restored, the Contractor shall replace it.
- C. Whenever a manufacturer's guarantee on any product used in the performance of this Agreement exceeds ONE (1) year, such guarantee shall become a part of this Agreement. The Contractor shall complete the warranty form in the name of the RCUH and submit such form to the manufacturer within the time required to validate the warranty. The Contractor shall submit to the RCUH a photocopy of the completed warranty form as evidence that such warranty form was filed with the manufacturer.

20. FINAL PAYMENT

Upon completion and acceptance of all work, the amount due the Contractor under this Agreement shall be paid upon the presentation of a properly executed invoice and after the Contractor shall

have furnished the RCUH with a valid tax clearance, a SPO Form-22 Certification of Compliance for Final Payment, all specified closing documents, and a release of all claims against the RCUH and the University arising by virtue of this Agreement, other than claims in stated amounts as may be specifically excepted by the Contractor from the operation of the release.

21. PURCHASE ORDER

The RCUH will issue a purchase order upon execution of this Agreement in the amount specified in this Agreement.

22. MATERIAL SAFETY DATA SHEETS (MSDS)

The Contractor shall submit to the Technical Representative SIX (6) copies of the Material Safety Data Sheet (MSDS) for each chemical product prior to it being provided or used under this contract. No chemical products shall be provided or used without prior approval by the RCUH. MSDS's shall be submitted within TWO (2) weeks of the date of Notice to Proceed. Failure to submit MSDS's may result in suspension of work for which no additional compensation and/or extension of time will be granted or in cancellation of the contract.

23. CHANGES

- A. Change order – The RCUH, at any time, and without notice to any surety, in a signed writing (field order or bulletin) designated or indicated to be a change order, may make changes in the work within the scope of this Agreement as may be found to be necessary or desirable. Such changes shall not invalidate this Agreement or release the sureties, and the Contractor will perform the work as changed, as though it had been part of the original Agreement. Minor changes in the work may be directed by the RCUH at no change in price or time.
- B. Adjustments of price – Any adjustment in price made pursuant to this clause shall be in accordance with RCUH pricing guidelines. The final change order cost shall be subject to revision based on an audit by the RCUH of the Contractor's cost proposal. Failure of the parties to agree to the change order cost shall not excuse the Contractor from proceeding with the Agreement as changed.
- C. Cost or Pricing Data – Upon request by the RCUH, with its cost proposal(s), Contractors shall submit supporting documentation (original invoices, quotations, bills of sale, cancelled checks, receipts, etc.) to substantiate substantive costs contained in the cost proposals for any change order work contemplated or performed. Upon request by the RCUH, Contractors shall also submit additional supporting documentation for line item costs which the RCUH deems questionable. If the Contractor refuses or fails to comply with such requests within the time specified by the RCUH, a finding of "unsatisfactory" shall be noted in the Contractor's overall performance evaluation and the RCUH may, by written notice to the Contractor, declare the Contractor to be in breach of this Agreement.
- D. Adjustments of time for performance – If any change order results in a bona fide increase or decrease in 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 for the direct costs of the work as changes as

the RCUH deems reasonable. The right of the Contractor to dispute the price or time or both shall not be waived by its performing the work, provided however, that it follows the notice requirements for disputes and claims established by this Agreement.

- E. Time period for claim – Within THIRTY (30) days after receipt of a written change order under subparagraph 41.A, Change Order, unless the period is extended by the RCUH in writing, the Contractor shall file a notice of intent to assert a claim for an adjustment. The requirement for timely written notice cannot be waived and shall be a condition precedent to the assertion of a claim.
- F. 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.
- G. Claims not barred – In the absence of a change order, nothing in this clause shall restrict the Contractor's right to pursue a claim arising under this Agreement or for breach of this Agreement.

24. SUSPENSION OF WORK

- A. Suspension of work order. The RCUH may, by written order, suspend the performance of the work, either in whole or in part for periods as it may deem necessary for any cause, including but not limited to:
 - 1) Weather or soil conditions considered unsuitable for prosecution of the work;
 - 2) Failure on the part of the Contractor to:
 - a) Correct conditions unsafe for the general public or for the workers;
 - b) Carry out orders given by the RCUH;
 - c) Perform the work in strict compliance with the provisions of this Agreement; or
 - d) Provide adequate supervision on the jobsite.
 - 3) Whenever a redesign that may affect the work is deemed necessary by the RCUH;
 - 4) Unacceptable noise or dust arising from the construction even if it does not violate any law or regulation; or
 - 5) The convenience of the RCUH.
- B. Partial and total suspension. Suspension of work on some but not all items of work shall be considered a "partial suspension." Suspension of work on all items shall be considered "total suspension." The period of suspension shall be computed from the date set out in the written order for work to cease until the date of the order for work to resume.
- C. Reimbursement to Contractor. In the event that the Contractor is ordered by the RCUH in writing as provided herein to suspend all work under this Agreement in accordance with

above Paragraph A, subparagraphs (3), (4), or (5), the Contractor may be reimbursed for actual money expended towards the project during the period of suspension. No allowance will be made for anticipated profits.

- D. Cost adjustment. If the performance of all or part of the work is suspended for reasons beyond the control of the Contractor, an adjustment shall be made for any increase in the cost of performance of this Agreement (excluding profit) necessarily caused by such suspension, and the Agreement modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension:
- 1) To the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; or
 - 2) For which an adjustment is provided for or excluded under any other provision of this Agreement.
- E. Claims for adjustment. Any adjustment in price made pursuant to this clause shall be determined in accordance with the provisions on changes and claims for adjustment. Claims for compensation shall be filed in writing with the RCUH within THIRTY (30) days after the date of the order to resume work or the claims will not be considered. Together with the claim, the Contractor shall submit substantiating documents covering the entire amount shown on the claim. The RCUH shall take the claim under consideration and may make such investigations as are deemed necessary and shall be the sole judge as to the equitability of the claim and its decision shall be final.
- F. No adjustment. No provision of this clause shall entitle the Contractor to any adjustments for delays due to failure of surety, for suspensions made at the request of the Contractor, for any delay required under this Agreement, for suspensions, either partial or whole, made by the RCUH under the provisions in Paragraph A, subparagraph (2).

25. DIFFERING SITE CONDITIONS

- A. Notification – The Contractor shall promptly, and before such conditions are disturbed, notify the RCUH of:
- 1) Subsurface or latent physical conditions at the site differing materially from those indicated in this Agreement; or
 - 2) Unknown physical conditions at this site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.
- B. Adjustments of price or time for performance – After receipt of such notice, the RCUH shall promptly investigate the site, and if it is found that such conditions do materially so differ and cause an increase in the Contractor's cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed as a result of such conditions, an adjustment shall be made and the Agreement modified in writing

accordingly. Any adjustment in price made pursuant to this clause shall be determined in accordance with the price adjustment clause of this Agreement.

- C. Timeliness of claim – No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in this clause; provided, however, that the time prescribed therefore may be extended by the RCUH in writing.
- D. No claim after final payment – No claim by the Contractor for an adjustment thereunder shall be allowed if asserted after final payment under this Agreement.
- E. Knowledge – Nothing contained in this clause shall be grounds for an adjustment in compensation if the Contractor had actual knowledge of the existence of such conditions prior to the submission of bids.

26. DIFFERING SITE CONDITIONS – CONTRACTOR'S RESPONSIBILITY

Except for subsurface and latent conditions, the Contractor accepts the conditions at the construction site as they eventually may be found to exist and warrants and represents that this Agreement can and will be performed under such conditions, and that all materials and equipment, labor, and other facilities required because of any differing conditions (physical or otherwise) shall be wholly at the Contractor's own cost and expense, anything in this Agreement to the contrary notwithstanding.

27. NOVATION OR CHANGE OF NAME

- A. No assignment. No RCUH contract is transferable, or otherwise assignable, without the written consent of the RCUH provided that a Contractor may assign monies receivable under a contract after due notice to the RCUH.
- B. Recognition of a successor in interest; assignment. When in the best interest of the RCUH, a successor in interest may be recognized in an assignment agreement in which the transferor, the transferee and the RCUH shall agree that:
 - 1) The transferee assumes all of the transferor's obligations;
 - 2) The transferor remains liable for all obligations under this Agreement but waives all rights under this Agreement as against the RCUH; and
 - 3) The transferor shall continue to furnish, and the transferee shall also furnish, all required bonds.
- C. Change of name. When a Contractor requests to change the name in which it holds a contract with the RCUH, RCUH shall, upon receipt of a document indicating such change of name (for example, an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting Contractor to effect such a change of name. The agreement changing the 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 effected hereunder other than by

the RCUH shall be reported to the RCUH within THIRTY (30) days of the date that the agreement becomes effective.

28. CLAIMS BASED ON ORAL DIRECTIVES

- A. Any oral order, direction, instruction, interpretation or determination from the RCUH which, in the opinion of the Contractor, causes any change, can be considered as a change only if the Contractor gives the RCUH written notice of its intent to treat such oral order, direction, instruction, interpretation or determination as a change directive. The written notice must be delivered to the RCUH before the Contractor acts in conformity with the oral order, direction, instruction, interpretation, or determination, but not more than FIVE (5) days after delivery of the oral order to the Contractor. The written notice shall state the date, circumstances, whether a time extension will be requested, and source of the order that the Contractor regards as a change. The written notice may not be waived and shall be a condition precedent to the filing of a claim by the Contractor. Unless the Contractor acts in accordance with this procedure, any oral order shall not be treated as a change and the Contractor waives any claim for an increase in the Agreement time or price related to such work.
- B. Not more than FIVE (5) days after receipt of the written notice from the Contractor the RCUH shall issue a change order for the subject work if the RCUH agrees that it constitutes a change. If no change order is issued in the time established, it shall be deemed a rejection of Contractor's claim for a change. If the Contractor objects to the RCUH's refusal to issue a change order, it shall file a written protest with the RCUH within THIRTY (30) days after delivery to the RCUH of the Contractor's written notice of its intention to treat the oral order as a change. In all cases the Contractor shall proceed with the work. The protest shall be determined as provided in the disputes and claims section of the contract.

29. DEFAULT, DELAY, AND TIME EXTENSION

- A. Default. If the Contractor refuses or fails to perform the work, or any separable part thereof, with such diligence as will assure its completion within the time specified in this Agreement, or any extension thereof, fails to complete said work within such time, or commits any other substantial breach of this Agreement, and further fails within SEVEN (7) consecutive calendar days after receipt of written notice from the RCUH to commence and continue correction of such refusal or failure with diligence and promptness, the RCUH may, by written notice to the Contractor, declare the Contractor in breach and terminate the Contractor's right to proceed with the work or such part of the work as to which there has been delay or other breach of this Agreement. In the event the RCUH may take over the work and perform the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the work, the materials, appliances, and plants as may be on the site of the work and necessary therefore. Whether or not the Contractor's right to proceed with the work is terminated, the Contractor and the Contractor's sureties shall be liable for any damage to the RCUH resulting from the Contractor's refusal or failure to complete the work within the specified time period.
- B. Liquidated damages upon termination. If fixed and agreed liquidated damages are provided in the contract, and if the RCUH so terminates the Contractor's right to proceed,

the resulting damage will consist of the liquidated damages for the time as may be required for final completion of the work.

- C. Liquidated damages in absence of termination. If fixed and agreed liquidated damages are provided in the contract, and if the RCUH does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.
- D. Time extension. The Contractor's right to proceed shall not be so terminated nor shall the Contractor be charged with resulting damage if:
 - 1) The delay in the completion of the work arises from causes such as: acts of God; acts of the public enemy; acts of the RCUH/University and any other governmental entity in either a sovereign or contractual capacity; acts of another contractor in the performance of a contract with the RCUH; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; unusually severe weather; delays of Subcontractors due to causes similar to those set forth above; or shortage of materials; provided, however, that no extension of time will be granted for a delay caused by a shortage of materials, unless the Contractor furnishes to the RCUH proof that the Contractor has diligently made every effort to obtain such materials from all known sources, and further proof that the inability to obtain such materials when originally planned did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the Contractor's operations; and
 - 2) The Contractor, within TEN (10) days from the beginning of the delay (unless the RCUH grants a further period of time before the date of final payment under the contract), notifies the RCUH in writing of the causes of delay. The RCUH shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in the judgment of the RCUH, the findings of fact justify such an extension.
- E. Additional rights and remedies. The rights and remedies of the RCUH provided in this Agreement are in addition to any other rights and remedies provided by law.

30. TERMINATION FOR CONVENIENCE

- A. Terminations. The RCUH may, when the interest of RCUH so requires, terminate this Agreement in whole or in part, for the convenience of the RCUH. The RCUH 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 work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work subject to the RCUH's approval. The RCUH may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or

subcontracts to the RCUH. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as necessary to do so.

C. Right to construction and goods. The RCUH may require the Contractor to transfer title and deliver to the RCUH in the manner and to the extent directed by the RCUH:

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

The Contractor shall protect and preserve property in the possession of the Contractor in which the RCUH has an interest. If the RCUH does not exercise this right, the Contractor shall use best efforts to sell such construction, goods, and construction materials in accordance with the standards of Section 490:2-706, HRS. This in no way implies that the RCUH has breached this Agreement by exercise of the termination for convenience clause.

D. Compensation.

- 1) The Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with 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 RCUH may pay the Contractor, if at all, an amount set in accordance with subparagraph (3), item (b).
- 2) The RCUH 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 RCUH, the proceeds of any sales of construction, goods, and construction materials under clause subparagraph (3), item (c), and the contracted price of the work not terminated.
- 3) Absent complete agreement under subparagraph (2), the RCUH shall pay the Contractor the following amounts, provided payments under subparagraph (2) shall not duplicate payments under this paragraph, for the total (without duplication of any items) of:
 - a) The cost of all work performed prior to the effective date of the notice of termination work plus a FIVE PERCENT (5%) markup on actual direct costs on such portion of the work (the markup shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for completed portions of the work; provided, however, that if it appears that the Contractor would have sustained a loss if the entire Agreement would have been completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of the loss;

- b) Subject to the prior approval of the RCUH, the costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph B, Contractor's obligations. Subcontractors shall be entitled to a markup of no more than TEN PERCENT (10%) on direct costs incurred to the date of termination. These costs must not include cost paid in accordance with subparagraph (3), item (a) and;
- c) The total sum to be paid the Contractor under this paragraph shall not exceed the total contracted price reduced by the amount of any sales of construction, goods, and construction materials under Paragraph C, Right to construction and goods, and the contracted price of work not terminated.
- 4) Cost claimed, agreed to, or established under subparagraphs (2) and (3) of this clause shall be in accordance generally accepted cost principles.

31. DOD PROVISIONS

The DOD Provisions cited in Attachment 5, will also apply to this contract.