

General Terms and Conditions
Oahu Transit Services, Inc.
November 24, 2021

Chapter 1 – Preamble

1.1 The General Terms and Conditions of Oahu Transit Service, Inc., incorporated by reference in the solicitation document and the awarded contract, referred to as the “GTC” or “General Conditions,” represent the OTS's policy and requirements relating to contracts.

1.2 Order of Precedence. The separate parts of the solicitation document, including the plans and specifications, are intended to complement each other. Unless it is apparent that a different order of precedence is intended, the most recent addenda shall govern over all other previously issued addenda and other contract documents; plans shall govern over the OTS' Standards and Specifications; special provisions shall govern over plans, the OTS' Standards and Specifications, and the General Conditions. Where the terms of the Final Proposal or offer submitted by the successful offeror exceed the standards and expectations of the solicitation document, such terms of the Final Proposal or offer shall be the new minimum requirements.

1.3 The General Terms and Conditions (GTC) for Oahu Transit Services, Inc. (OTS) apply to all goods and services, construction, and professional services contracts entered into with OTS or any other contract which incorporates the GTCs by reference. Unless indicated otherwise, each section of the GTCs apply to all contracts. Sections or chapters which, however, indicate that they apply only to goods and services/professional services contracts or construction contracts, apply only to such referenced type of contract. The GTCs in its entirety apply to Design-Build Contracts with sections applicable to professional services applied to the design portion of the contract and sections applicable to construction services applied to the construction portion of the contract.

Chapter 2 – General Provisions

2.1 Definitions.

Terms as used in this solicitation document and the Contract, unless the context requires otherwise, shall have the following meaning:

"Addendum/Addenda" means a written document issued by OTS during the solicitation period involving changes to the solicitation documents which shall be considered and made a part of the solicitation documents and resulting contract.

"Amendment" shall have the same meaning as “contract modification” or “modification as hereafter defined.

"Best value" means the most advantageous offer determined by evaluating and comparing all relevant criteria in addition to price so that the offer meeting the overall combination that best serves OTS is selected.

"Bid" means the executed document submitted by a bidder in response to a request for bids.

"Bidder" means any individual, partnership, firm, corporation, joint venture, or other legal entity submitting, directly or through a duly authorized representative or agent, a bid for the good, service, or construction contemplated.

"Bid sample" means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.

"Change order" means an amendment or modification of the Contract signed by the Contracting Officer or his/her authorized designee, directing the Contractor to make changes with or without the consent of the Contractor.

"Chief procurement officer" means the chief procurement officer of OTS

"City" means the City and County of Honolulu, State of Hawaii.

"Construction" means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. The term includes the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

"Contract" means all documents covering the goods, services, construction or professional services being procured for which award is made to the Contractor, including the furnishing of labor, materials and equipment in connection therewith. It may include the following documents, as applicable, and any amendments or addenda thereto: the solicitation documents, offer, RFP Final Proposal (see definition herein), these general conditions and any supplements to the general conditions, change orders, bonds and plans, and the contract agreement, whether attached to or incorporated by reference.

"Contract modification" or "Modification" means any written alteration within the scope of the contract to specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of the Contract executed by both parties to the Contract.

"Contracting Officer" means the OTS Vice President of Finance & Administration or designee.

"Cost analysis" means the evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.

"Cost data" means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements which have been actually incurred or which are expected to be incurred by the contractor in performing the contract.

"Days" means consecutive calendar days unless otherwise specified.

"Director" means the OTS Director of Purchasing & Materials Management

"Discussion" means an exchange of information to promote understanding of OTS' requirements and offeror's proposal and to facilitate arriving at a contract that will be the best value to OTS. Discussions are not permissible in competitive sealed bidding.

"Design and plans" means any and all designs, plans, construction drawings, specifications, cost estimates, work schedules, proposals, studies, reports and other items.

"Designee" means a person appointed by the OTS Vice President of Finance & Administration or the Officer-in-Charge to act on its behalf with delegated authority.

"Final Proposal" means the final mutually-agreed terms of the proposal submitted by the awarded Offeror in response to the OTS' RFP or the Best and Final Offer accepted by OTS.

"Goods" means all property, including but not limited to equipment, equipment leases, materials, supplies, printing, insurance, and processes, including computer systems and software, excluding land or a permanent interest in land, leases of real property, and office rentals.

"Guarantee" or "Warranty" means a written agreement or assurance of the quality of or the length of use to be expected from equipment, material, device, or system offered, or work performed.

"Informal Bid" means a quotation made under small purchase procedures or a quotation made under emergency purchase procedures.

"Invitation for bids" or "request for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids under the competitive sealed bidding source selection method.

"Notice to Offerors" means the publication or the notice of a solicitation for offers.

"Notice to proceed" or "NTP" means the document issued to the Contractor designating the official commencement date of the performance under the Contract.

"Offer" means the bid, proposal, or quotation.

"Offeror" means any individual, partnership, firm, corporation, joint venture, or other legal entity submitting, directly or through a duly authorized representative or agent, an offer for the goods, service, or construction contemplated.

"Officer-in-Charge" means the department head of the agency with delegated authority for which goods, services, or construction is being procured or the Officer-in-Charge's delegated designee.

"Opening" means the date set for opening of bids, receipt of unpriced technical offers in multi-step sealed bidding, or receipt of proposals in competitive sealed proposals.

"Overhead" means continuous or general costs occurring in the normal course of business, including but not limited to costs for labor, rent, royalties, interest, discounts paid, insurance, bonds, lighting, heating, cooling, accounting, legal fees, equipment and facilities, telephone systems, depreciation, and amortization.

"Plans" (or "Drawings") mean the contract drawings and any OTS-approved revisions to drawings, in graphic or pictorial form, which show the design, location, character, dimensions and details of the work to be done and which shall be part of the Contract documents.

"Price analysis" means the evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

"Price data" means factual information concerning prices, including profit, for goods, services, or construction substantially similar to those being procured. In this definition, "prices" refers to offered or proposed selling prices, historical selling prices, and current selling prices of such items. This definition refers to data relevant to both the general contractor and subcontract prices.

"Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any good, service, or construction. The term also includes all functions that pertain to the obtaining of any good, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

"Procurement officer" means any person authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of authority.

"Professional services" means those services within the scope of the practice of architecture, landscape architecture, professional engineering, and surveying, real property appraisal, law, medicine, accounting, dentistry, or any other practice defined as professional or the professional and scientific occupation series contained in the United States office of personnel management's Qualifications Standard Handbook.

"Project" means work to be performed as set forth in the Contract, including furnishing all services, labor, goods, materials, supplies, equipment and other incidentals reasonably necessary for the successful completion of work contemplated under the Contract.

"Proposal" means the executed document submitted by an Offeror in response to a Request for Proposals.

"Purchasing Division" means the Division of Purchasing and Materials Management, Department of Finance & Administration, with delegated authority to solicit bids and proposals and award contracts.

"Quotation" means a statement of price, terms of sale, and description of goods, services, or construction offered by a prospective seller to a prospective purchaser.

Qualified List method means the method of source selection for professional services.

"Request for Proposals" or "RFP" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals under the competitive sealed proposal source selection method.

"Responsible Offeror" means a person who has the capability in all respects to perform fully the Contract requirements, and the integrity and reliability which will assure good faith performance.

"Responsive Bidder or Offeror" means a person who has submitted an offer which conforms in all material respects to the IFB or RFP.

"Solicitation" means an invitation for bids, request for proposals, or a request for quotation issued by OTS for the purpose of soliciting bids or proposals to perform under OTS contract.

"Specifications" mean any description of the physical or functional characteristics, or of the nature of a good, service, or construction item. The term includes descriptions or any requirement for inspecting, testing, or preparing a good, service, or construction item for delivery.

"State" means the State of Hawaii.

"Standard commercial product" means a product or material, in the normal course of business, is customarily maintained in stock or readily available by a manufacturer, distributor, or dealer for the marketing of the product.

"Subcontractor" means any person who enters into an agreement with the Contractor to perform a portion of the work for the Contractor.

"Using Agency" means the department(s) of OTS who is(are) the end-user(s) of the project procured by the Purchasing Division.

"Work" means the furnishing by the Contractor of all labor, services, material, equipment, and other incidentals necessary for the satisfactory performance of the contract.

"Working day" means any day on the calendar, exclusive of State holidays, Saturdays, and Sundays. Unless another meaning is intended, "working days" shall mean consecutive working days.

2.2 References.

(a) When reference is made to known Standards and Specifications, the most recently adopted and published edition of such standards and specifications on the date of the notice to offerors is contemplated, unless otherwise specified.

(b) Abbreviations. The following abbreviations shall refer to the technical society, organization, body, code, rules, or standards, listed opposite each abbreviation:

ANSI	American National Standard Institute
ASTM	American Society for Testing and Materials
CFR	Code of Federal Regulations
FTA	Federal Transit Administration
IFB	Invitation for Bids
ITO	Instructions to Offerors
RFB	Request for Bids
RFP	Request for Proposal
UL	Underwriters' Laboratories, Inc.

2.3 Execution of Contract.

This contract shall not be considered binding upon OTS until the contract has been fully and properly executed by all the parties thereto.

2.4 Independent Contractor.

It is expressly understood and agreed that the Contractor is an independent contractor, with the authority to control and direct the performance and details of the work and services herein contemplated; however, OTS retains the general right of inspection by a designated representative in order to judge, whether OTS' opinion, such work is being performed by the Contractor in accordance with the terms of this agreement. The contractor shall not be deemed to be an agent, servant, representative or employee of OTS. The contract shall not be construed to create a partnership or joint venture between OTS and the Contractor.

2.5 Compliance with Contract Terms.

The work shall be completed in conformity with the Contract, including the specifications the General Terms and Conditions and other provisions forming a part of the Contract. In the event the Contractor fails to so perform, the chief procurement officer, in addition to any other recourse, reserves the right to suspend the Contractor from bidding on any or all contracts of the City, State of Hawaii, or other counties of the State.

2.6 Taxes.

Unless otherwise specified in the Special Provisions or other section of the solicitation document or contract, the offeror or Contractor shall include and be responsible for paying all taxes which shall be applicable to the goods, services or construction or the furnishing or sale thereof. Contractor shall not pass through any increases in taxes to OTS.

2.7 Standard Equipment.

Whenever the word "standard" is used in these specifications to describe any item, piece of equipment, or parts assembly, it shall be construed to mean that the items or assemblies so described shall be the newest, regular, and current product of the manufacturer thereof. Such product shall be identified by a model or other designation without modification or omission of any of its usual parts, or the substitution of others, except as hereinafter specified, and the details, capacities and ratings must conform in every respect to the said manufacturer's catalog or other printed matter describing the items or assemblies. Standard sub-assemblies, accessories, fittings and finishes shall be construed to be those which are regularly furnished as a part of the principal unit or assembly and shall be included in the selling price thereof.

2.8 Quality of Goods.

Unless otherwise specified, any goods required by the bid solicitation or contract shall be new and the best quality of its kind, and shall be goods of recognized manufacturers, unless otherwise specified in the Special Provisions, Specifications, or other section of the contract.

2.9 Indemnity.

The Contractor shall indemnify, hold harmless and defend OTS and its all its elected and appointed officials, employees, agents, and representatives from all suits, actions, claims, damages, penalties, judgments of any character, and all losses or liabilities, including without limitation, damages from personal injury, bodily injury or death of persons arising out of or in any way connected to the performance of the work or any of the obligations contained in this Contract, provided, however, that the Contractor shall not be responsible for such portion of damages, if any, proximately caused by the negligence or intentional misconduct of OTS. It is expressly acknowledged and agreed that each of the obligations set forth herein is independent of any obligations to procure insurance for the benefit of OTS and that each shall be given effect. In is expressly acknowledged and agreed that the Contractor and any other responsible party shall be jointly and severally liable to OTS with respect to claims and/or losses.

2.10 Infringement Indemnification.

If the Contractor uses or licenses any design, device, material, process, technology or any other intellectual property ("Intellectual Property") covered by patent, copyright, trademark or other intellectual property protection, the right for such use shall be procured by the Contractor from the appropriate owner. The Contractor shall defend, indemnify and hold OTS and all its officers, agents, servants and employees harmless against all claims arising from the use of any claims for infringement by reason of the use of any such Intellectual Property in connection with providing services under this Contract.

2.11 Subcontracting.

Except as provided for in the final Proposal or Bid as accepted by OTS, the Contractor shall not sublet or replace its subcontractors any of the work to be performed without written permission from the Director. The subcontracting shall not, under any circumstances, relieve the Contractor of the Contractor's obligation and liability under the contract with OTS. All persons engaged in performing the work covered by the contract shall be considered as agents of the Contractor, and shall be subject to the provisions thereof.

2.12 Assignment of Money Due or Payable.

No assignment of money due or to become due to a Contractor on any OTS contract shall be made without prior written consent of the Director. Such consent shall be given and such an assignment shall be accepted only if the assignment meets the following requirements:

- (1) The assignment must be money due or to become due on a formal contract. A formal contract does not include a Purchase Order or letter contract.
- (2) The assignment must be the entire amount due or to become due on the contract and the amount due or to become due must be not less than one thousand dollars (\$1,000).

2.13 Statutory or Ordinance Requirements.

The Contractor shall at all times observe, perform, and comply with all federal, state and local laws or ordinances, rules and regulations which in any manner affect those engaged or

employed in the performance of the work, the manufacture and sale of materials and equipment required under the contract, and the conduct of the work. The Contractor shall also comply with all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the work. Any reference to such laws, ordinances, rules and regulations shall include any amendments thereto. If any discrepancy or inconsistency is discovered in the contract for the work in relation to any such laws, ordinances, rules and regulations, orders or decrees, the Contractor shall forthwith report the same to the Officer in Charge in writing.

2.14 Energy Star Qualified Products.

The Contractor shall provide products that earn the ENERGY STAR and meet the energy specifications for energy efficiency, with exceptions allowed only as permitted by OTS. The vendor is encouraged to visit energystar.gov for complete product specifications and updated lists of qualifying products.

2.15 Contractors that Received Bid Preferences in the Award of Contract.

Contractors that received bid preferences in the award of contract must furnish the goods, services, or construction as offered and comply with the bid preference requirements.

2.16 Copyright.

OTS shall have ownership of the work product that is produced by the Contractor in the performance of work under contract with OTS, including an unrestricted, royalty-free, nonexclusive and irrevocable license to reproduce, publish, translate or otherwise use and to authorize others to publish and use all materials obtained or produced in connection with the work hereunder, which may be copyrighted by OTS.

2.17 Confidentiality with the News Media and Public.

When dealing with the news media or the public, the contractor is expected to be circumspect and to treat all matters falling within the scope of the contract with the utmost confidentiality. The contractor shall consult with and/or obtain the consent of the officer-in-charge prior to having conversations with or giving public interviews to the news media or any other members of the public.

2.18 Personal Information Protection.

- (a) Definition. The terms as used in this section have the following meaning: "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted: (1) Social Security number; (2) Driver's License number or Hawai'i Identification Card number; or (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information. "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" mean the technology and the policy and procedures for use of the technology to protect and control access to personal information.

- (b) Confidentiality of Material.
- (1) All material given to or made available to the Contractor by OTS by virtue of this Contract, which consists of personal information, shall be safeguarded by the Contractor and shall not be disclosed without the prior written approval of OTS.
 - (2) Contractor agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
 - (3) Contractor agrees to implement appropriate technological safeguards that are acceptable to OTS to reduce the risk of unauthorized access to the personal information.
 - (4) Contractor shall report to OTS in a prompt and complete manner any security breaches involving personal information.
 - (5) Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor because of a use or disclosure of personal information by Contractor in violation of the requirements of this paragraph.
 - (6) Contractor shall complete and retain a log of all disclosures made of personal information received from OTS, or personal information created or received by the Contractor on behalf of OTS.
- (c) Security Awareness Training and Confidential Agreements.
- (1) Contractor certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
 - (2) Contractor certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the Contractor will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services to this Contract.
- (d) Termination for Cause. In addition to any other remedies provided for by this Contract, if OTS learns of a material breach by the Contractor of this paragraph by the Contractor, OTS may at its sole discretion:
- (1) Provide an opportunity for the Contractor to cure the breach or end the violation;
 - or
 - (2) Immediately terminate this Contract.

In either instance, the Contractor and OTS shall follow Chapter 487N, HRS, with respect to notification of a security breach of personal information.

- (e) Records Retention.
- (1) Upon any termination of this Contract, the Contractor shall pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from OTS.
 - (2) The Contractor and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the Contractor on behalf of OTS, and any cost or pricing data, for three
 - (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall not be disclosed without the prior written approval of OTS. After the three (3) year retention period has ended,

the files, books, and records that contain personal information shall be destroyed pursuant to Chapter 487R, HRS.

2.19 Audit and Inspection of Records

Contractor agrees to maintain and make available to OTS, during regular business hours, accurate books and accounting records relating to its work under this Contract. Contractor will permit OTS to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Contract. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under this Contract or until after final audit has been resolved, whichever is later. OTS acknowledges that the documents and records presented for inspection may be Contractor's confidential information.

2.20 Governing Law and Venue

The provisions of the Contract shall be interpreted in accordance with the laws of the State of Hawai'i as those laws are construed and amended from time to time. All disputes arising out of or relating to this contract shall be subject to the jurisdiction and venue of the state and federal courts in Honolulu, Hawai'i.

Chapter 3 – Additional Provisions

3.1 General. Unless otherwise specified, the contract clauses in this chapter apply to the solicitation and contract awarded. Clauses that are specific for a certain category of goods, services, or construction are not applicable for contracts of another category. For example, specific clauses applicable only to goods and services are not required for construction contracts.

3.2 Change Orders to Goods and Services Contracts. OTS may at any time make such modifications in the contract, and the services, designs and plans, or studies prepared by the contractor as the officer-in-charge deems necessary and advisable. Such modifications shall be made by a supplemental agreement in writing or by a written order of the procurement officer; provided that modifications by such a written order shall be limited to modifications in the scope of services and in the designs, plans and studies; and provided further that modifications involving no reduction or increase in compensation of the contractor may be made by written order of the officer-in-charge. The following shall apply to the purchase of goods and services under this contract:

Changes Clause

(1) Generally. By written order, at any time, and without notice to any surety, the procurement officer may, unilaterally, order of the Contractor: (A) Changes in the work within the scope of the contract; and (B) Changes in the time of performance of the contract that do not alter the scope of the contract work.

(2) Adjustments of Price or Performance Time. 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 contract, an adjustment shall be made and the contract modified in writing accordingly. (A) Any adjustment in contract price made pursuant to this clause

may be determined, where applicable, utilizing the Price Adjustment clause notated in HAR section 3-125-12. Failure of the parties to agree to an adjustment in contract price may be resolved utilizing the price adjustment clause notated in HAR section 3-125-12(1)(E). (B) Failure of the parties to agree to an adjustment in time shall not excuse the Contractor from proceeding with the contract as changed, provided that the procurement officer within fourteen (14) days after the changed work commence, makes the provisional adjustment in time as the procurement officer deemed reasonable. The right of the Contractor to dispute the contract price or time required for performance or both shall not be waived by its performing the work, provided however, that it follows the written notice requirements for disputes and claims established by the contract.

(3). Time Period for Claim. The contractor must file a written claim disputing the contract price or time provided in a change order within ten (10) days after receipt of a written change order, unless such period for filing is extended by the procurement officer in writing. The requirement for filing a timely written claim cannot be waived and shall be a condition precedent to the assertion of a claim.

(4). Claim Barred After Final Payment. No claim by the Contractor for an adjustment hereunder shall be allowed if the claim is not received by the procurement officer prior to final payment under this contract.

(5). Other Claims not Barred. In the absence of a change order, nothing in this clause shall be deemed to restrict the Contractor's right to pursue a claim under the contract or for breach of contract.

3.3 Modifications to Goods and Services Contracts. The following shall apply to the procurement of goods and services under this contract:

Modifications Clause

(1) Contract modification. By a written order, at any time, and without notice to any surety, the procurement officer, subject to mutual agreement of the parties to the contract and all appropriate adjustments, may make modifications within the general scope of this contract to include any one or more of the following:

- (A) Drawings, designs, or specifications, for the goods to be furnished;
- (B) Method of shipment or packing;
- (C) Place of delivery;
- (D) Description of services to be performed;
- (E) Time of performance (i.e., hours of the day, days of the week, etc.);
- (F) Place of performance of the services; or
- (G) Other provisions of the contract accomplished by mutual action of the parties to the contract.

(2) Adjustments of Price or Time for Performance. If any modification increases or decreases the Contractor's cost of, or the time required for, performance of any part of the work under this contract, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this contract or as negotiated.

(3) Claim Barred after Final Payment. No claim by the Contractor for an adjustment hereunder shall be allowed if the claim is not received by the procurement officer prior to final payment under this contract.

(4) Other Claims not Barred. In the absence of such a contract modification, nothing in this clause shall be deemed to restrict the Contractor's right to pursue a claim under the contract or for a breach of contract.

3.4 Stop Work Orders for Goods and Services Contracts. The following shall apply to the procurement of goods and services under this contract:

(1) Order to Stop Work. The procurement officer, 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 work called for by this contract. 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 work order issued pursuant to this section. Upon receipt of an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Procurement Officer shall either: (A) Cancel the stop work order; or (B) Terminate the work covered by the order as provided in the "termination for default clause" or the "termination for convenience clause" of this contract.

(2) Cancellation or Expiration of the Order. If a stop work order issued under this section is canceled 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 work. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if: (A) The stop work 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 contract; and (B) The Contractor asserts a claim for an adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the procurement officer decides that the facts justify such action, any claim asserted may be received and acted upon at any time prior to final payment under this contract.

(3) Termination of Stopped Work. If a stop work order is not canceled and the work covered by the order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowable by adjustment or otherwise.

(4) Adjustment of Price. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the price adjustment clause of this contract.

3.5 Variations in Definite Quantities for Definite Quantity Goods and Services Contracts. The following shall apply to the procurement of goods and services under this contract:

Variation in quantity. Upon the agreement of the parties, the quantity of goods or services or both specified in the contract may be increased by a maximum of ten percent provided the (1) unit prices will remain the same except for any price adjustments otherwise applicable and (2) the officer-in charge makes a written determination that

such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

3.6 Price Adjustment for Goods and Services Contracts. The following shall apply to the procurement of goods and services under this contract:

Price Adjustment Clause

(1) Price adjustment methods. Any adjustment in contract price pursuant to a clause in this contract shall be made in one or more of the following ways:

- (A) By agreement on a fixed price adjustment before commencement of the pertinent performance;
- (B) By unit prices specified in the contract or subsequently agreed upon before commencement of the pertinent performance;
- (C) By the costs attributable to the event or situations under such clauses, with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon before commencement of the pertinent performance;
- (D) In such other manner as the parties may mutually agree before commencement of the pertinent performance; or
- (E) In the absence of agreement between the parties, the provisions of section 103D-501(b)(5), HRS, may be utilized.

(2) Submission of Cost or Pricing Data. The contractor shall be required to submit cost or pricing data upon request of the Officer-in-Charge. A fully executed change order or other document permitting billing for the adjustment in price under any method listed in paragraph (1)(A) through (1)(D) shall be issued within ten days after agreement on the method of adjustment.

3.7 Novation or Change of Name. The following shall apply to this contract:

- (1) No Assignment. No OTS contract is transferable, or otherwise assignable, without the written consent of the chief procurement officer provided that a contractor may assign monies receivable under a contract upon request.
- (2) Recognition of a Successor in Interest; Assignment. When in the best interest of OTS, a successor in interest may be recognized in an assignment agreement in which the transferor, the transferee and OTS shall agree that:
 - (A) The transferee assumes all of the transferor's obligations;
 - (B) the transferor remains liable for all obligations under the contract as against OTS; and
 - (C) The transferor shall continue to furnish, and the transferee shall also furnish, all required bonds, as required.
- (3) Change of Name. When a contractor requests to change the name in which it holds a contract with OTS, the procurement officer responsible for the contract 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 specifically indicate that no other terms and conditions of the contract are thereby changed.

3.8 Claims Based on a Procurement Officer's Actions or Omissions for Goods and Services Contracts. The following shall apply to the procurement of goods and services under this contract:

(1) Claims Based on a Procurement Officer's Actions or Omissions. If any action or omission on the part of a procurement officer or designee of the officer, requiring performance changes within the scope of the contract 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 contract 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:

(A) The Contractor shall have given written notice to the Director or designee:

(i) Prior to the commencement of the work involved, if at that time the Contractor knows of the occurrence of the action or omission;

(ii) Within thirty (30) days after the Contractor knows of the occurrence of the action or omission, if the Contractor did not have knowledge prior to the commencement of the work; or

(iii) Within such further time as may be allowed by the Director in writing.

(B) 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 or designee, upon receipt of the notice may rescind the action, remedy such omission, or take such other steps;

(C) The notice required by subparagraph (A) 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

(D) The Contractor maintains and, upon request, makes available to the Director within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

(2) Nothing herein contained, however, shall excuse the Contractor from compliance with any rules of law precluding any OTS officers and any Contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

(3) Adjustments of Price. Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the price adjustment clause of the contract.

3.9 Termination for Default in Goods and Services Contracts. The following shall apply to the procurement of goods and services under this contract:

(1) Default. If the contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the procurement officer may notify the contractor in writing of the delay or non-performance, and if not

cured in ten days or any longer time specified in writing by the procurement officer, the officer may terminate the contractor's right to proceed with the contract or a part of the contract as to which there has been delay or other breach of contract. In the event of termination in whole or in part, the procurement officer may procure similar goods or services in a manner and upon terms deemed appropriate by the procurement officer. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

(2) Contractor's Duties. Notwithstanding termination of the contract and subject to any directions from the procurement officer, the contractor shall take timely and necessary action to protect and preserve property in the possession of the contractor in which OTS has an interest.

(3) Compensation. Payment for completed goods delivered and accepted by the State shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the contractor and procurement officer; if the parties fail to agree, the procurement officer shall set an amount subject to the contractor's rights. OTS may withhold from amounts due the contractor as the procurement officer deems to be necessary to protect OTS against loss because of outstanding liens or claims of former lien holders and to reimburse OTS for the excess costs incurred in procuring similar goods and services.

(4) 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 contract in accordance with its terms, if the contractor has notified the procurement officer within fifteen days after the cause of the delay and the failure arises out of causes including but not limited to the following: acts of God; acts of the public enemy; acts of the State 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 the failure arises out of causes similar to those set forth above, the contractor shall not be deemed to be in default, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the contractor to meet the contract requirements. Upon request of the contractor, the procurement officer shall ascertain the facts and extent of the failure, and, if the 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 contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled in fixed-price contracts, 'Termination for Convenience' and in cost-reimbursement contracts, 'Termination'. As used in this paragraph, the term 'subcontractor' means subcontractor at any tier.

(5) Additional Rights and Remedies. The rights and remedies provided in this contract are in addition to any other rights and remedies provided by law.

3.10 Termination for Convenience of Goods and Services Contracts. The following shall apply to the procurement of goods and services under this contract.

(1) Termination for Convenience. The procurement officer may, when the interests of OTS so require, terminate this contract in whole or in part, for the convenience of OTS. The procurement officer shall give written notice of the termination to the contractor, specifying the part of the contract terminated and when termination becomes effective.

(2) Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work, and on the dates 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 OTS' approval. The procurement officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to OTS. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(3) Right to Goods. The procurement officer may require the contractor to transfer title and deliver to OTS in the manner and to the extent directed by the procurement officer:

(A) Any completed goods; and

(B) The partially completed goods and 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 contract. The contractor shall, upon direction of the procurement officer, protect and preserve property in the possession of the contractor in which OTS has an interest. If the procurement officer does not exercise this right, the contractor shall use the contractor's best efforts to sell the goods and manufacturing materials. Use of this section in no way implies that OTS has breached the contract by exercise of the termination for convenience clause.

(4) Compensation:

(A) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data. If the contractor fails to file a termination claim within one year from the effective date of termination, the procurement officer may pay the contractor, if at all, an amount set in accordance with subparagraph (C).

(B) The procurement officer and the contractor may agree to settlement provided the contractor has filed a termination claim supported by cost or pricing data and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by OTS, the proceeds of any sales of goods and manufacturing materials under subparagraph (3) of this clause, and the contract price of the work not terminated.

(C) Absent complete agreement under subparagraph (B), the procurement officer shall pay the contractor the following amounts, provided payments agreed to under subparagraph (B) shall not duplicate payments under this subparagraph for the following:

(i) Contract prices for goods or services accepted under the contract;

(ii) Costs incurred in preparing to perform and performing the terminated portion of the work plus a five per cent markup on actual direct costs on the portion of the work, the markup shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided that if it appears that the contractor would have sustained a loss if the entire contract 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 loss;

(iii) Subject to the prior approval of the procurement office the costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to paragraph (2). Subcontractors shall be entitled to a markup of no more than ten per cent on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with clause (ii) of subparagraph (C).

(iv) The total sum to be paid the contractor under this subparagraph shall not exceed the total contract price reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph (B), and the contract price of work not terminated.

3.11 Prompt Payment by Contractors to Subcontractors.

Prompt Payment Clause

(1) Generally. Any money paid to a contractor shall be disbursed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes on which the procurement agency has withheld payment.

(2) Final payment. Upon final payment to the contractor, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

(3) Penalty. The procurement officer or the contractor, as applicable, will be subject to a penalty of one and one-half per cent per month upon outstanding amounts due that were not timely paid by the responsible party under the following conditions. Where a subcontractor has provided evidence to the contractor of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request as described in paragraph (4), and:

(A) Has provided to the contractor an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State; or

(B) The following has occurred:

(i) A period of ninety days after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has elapsed without written notice of a claim given to contractor and the surety; and

(ii) The subcontractor has provided to the contractor, an acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two times the amount being retained or withheld by the contractor; any other bond acceptable to the contractor; or any other form of mutually acceptable collateral, then, all sums retained or withheld from a subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the procurement officer to the contractor and subsequently, upon receipt from the procurement officer, by the contractor to the subcontractor within the applicable time periods specified in paragraph (2). The penalty may be withheld from future payment due to the contractor, if the contractor was the responsible party.

If a contractor has violated paragraph (2) three or more times within two years of the first violation, the contractor shall be referred by the procurement officer to the Contractor License Board.

(4) A properly documented final payment request from a subcontractor, as required by paragraph (3), shall include:

(A) Substantiation of the amounts requested;

(B) A certification by the subcontractor, to the best of the subcontractor's knowledge and belief, that:

(i) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;

(ii) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the subcontract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and

(iii) The payment request does not include any amounts that the subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract; and

(C) The submission of documentation confirming that all other terms and conditions required under the subcontract agreement have been fully satisfied.

The procurement officer shall return any final payment request that is defective to the contractor within seven days after receipt, with a statement identifying the defect.

(5) This section shall not be construed to impair the right of a contractor or a subcontractor at any tier to negotiate and to include in their respective subcontracts provisions that provide for additional terms and conditions that are requested to be met before the subcontractor shall be entitled to receive final payment under paragraph (3); provided that any such payments withheld shall be withheld by the procurement officer:"

Chapter 4 – Goods, Services, and Professional Services Provisions Supplement

4.1 Insurance Requirements.

(a) The following insurance requirements shall apply to the procurement of services and professional services. Unless otherwise specified in contract documents, the contractor shall procure or cause to be procured and maintain (as provided herein), at no cost to OTS, during the life of this contract and any extensions thereof, the kinds and amounts of insurance listed below to cover the operations under the contract, and any and all other insurance that may be required under the laws, ordinances or regulations of any governmental authority. The contractor shall either include all tiers of subcontractors, if any, under the policies required under paragraphs (2) through (4), to the extent permitted by law, or shall require all subcontractors to maintain coverages described in paragraphs (1) through (4).

(1) Workers Compensation and Employers Liability Insurance. Contractor shall maintain workers compensation and employers liability insurance. Workers compensation coverage shall be in accordance with State statutes. Employers liability coverage shall

provide limits of not less than \$100,000 each accident for bodily injury by accident or \$100,000 each employee, \$100,000 aggregate, for bodily injury by disease. The policy shall include a waiver of subrogation in favor of OTS.

(2) Commercial General and Umbrella Liability Insurance. Contractor shall maintain commercial general liability (CGL) and if necessary commercial umbrella insurance, in any combination, with limits of not less than \$1,000,000 each occurrence, and general aggregate. CGL insurance shall be written on ISO occurrence form, CG 00 01 (or a substitute form providing equivalent coverage), and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). OTS shall be included as an additional insured under the CGL, using ISO additional insured endorsement CG 20 10 1185 (or equivalent), and under the commercial umbrella, if any. The policy(ies) shall contain a waiver of subrogation in favor of OTS.

(3) Business Automobile and Umbrella Liability Insurance. If the Contractor intends to use a motor vehicle in the performance of the work under the contract, the contractor shall maintain business auto liability (including no-fault coverage) and if necessary, commercial umbrella liability, in any combination, insurance with limits of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos) used by contractor in the performance of this contract. If necessary, the policy shall be endorsed to provide contractual liability coverage.

(4) Professional Liability Insurance. If the contractor is to provide professional services under this contract, the contractor shall maintain professional liability insurance with limits of not less than \$1,000,000 per claim/annual aggregate, covering the contractor, the contractor's employees or agents for liability arising out of errors, omissions, or negligence in the performance of professional services under the contract. Such insurance shall remain in full force and effect continuously for the period of design and construction of the work, and for a period of 1 year following substantial completion of the work, or such other period as specified in the contract documents.

(b) The insurance specified above shall:

- (1) Provide that such insurance is primary coverage with respect to all insureds for claims arising from contractor's negligent acts and/or omissions or misconduct; and that any insurance (or self-insurance) carried by OTS shall be excess and non-contributing;
- (2) Contain a standard Cross Liability endorsement providing that the insurance applies separately to each insured, applicable to policies specified in (2) and (3) above;
- (3) Not be terminated, canceled, or not renewed without THIRTY (30) DAYS prior written notice to the Contractor; and Contractor shall notify OTS within seven (7) calendar days of such cancellation, except for non-payment of premium;
- (4) Except for Professional Liability insurance required hereinabove, shall be written on an "Occurrence" form of policy, unless otherwise specifically approved by OTS.
- (5) Be provided by insurers authorized to do business in the State of Hawaii, and with a current Best's rating of not less than A-VII, or otherwise as approved by OTS;

(c) Certificate of Insurance:

- (1) The contractor will provide and thereafter maintain current and renewal certificates of insurance, prepared by a duly authorized agent, or if requested, copies of the policies,

evidencing the insurance in effect at all times during the term of this contract as required herein to OTS.

(2) Certificates shall clearly identify the project by name and/or contract number.

(3) Certificates shall show the Certificate Holder as the Oahu Transit Services, Inc., and be delivered to the Director of Purchasing & Materials Management, 811 Middle Street, Building C, Honolulu, Hawaii 96819.

4.2 Delivery.

(a) This clause shall apply to definite quantity goods or services contracts only. The number of calendar days for delivery of goods or completion of contract will be calculated from the official commencement date.

(b) Should the Contractor begin work or make delivery in advance of the official commencement date, such work or delivery shall be considered as having been done at the Contractor's own risk and expense as a volunteer and no payment will be owed to the Contractor for such advance work or delivery.

(c) The service, material or goods shall be performed, completed or delivered on or before the due date specified by OTS. Should job completion or delivery of goods or services be delayed on account of any act or omission on the part of OTS, extraordinary weather, fire, other extraordinary reasons for which the Contractor is not responsible, or by any other circumstances for which the Contractor has not control, the due date for such performance may be extended by the Director. The Director shall be the final judge for extending the due date of any contract, provided that written application for an extension of time is filed by the Contractor with the Director before the expiration of the due date or before the expiration of any extended time limit. The request for extension shall be in writing and include documents such as Contractor's Purchase Order, manufacturers' acknowledgment, shipping manifest and any other documents substantiating the causes of such delay. Such extension, if granted, shall not be deemed a waiver of the right to terminate the contract for other or additional delays not covered by the specific terms of such extensions(s).

(e) The Contractor shall deliver the materials or goods and furnish the services at such particular location designated and in the manner directed by the Director.

4.3 Execution of Professional Services Work.

(a) The contractor shall be available upon reasonable demand to discuss the progress of any professional services performed under the contract. The contractor shall also remain available through any applicable alternative means of contract, such as cellular phone, in the event of an emergency or other event that necessitates immediate communication with the contractor. All questions arising during the performance of the contract which must be resolved by the officer-in-charge shall be brought to the officer-in-charge's immediate attention. The contractor shall direct its work to relate appropriately to, and in accordance with, established principles, practices and standards for such work. The contractor shall direct its work to relate appropriately to, and in accordance with, established engineering, planning and/or architectural design principles and practices for good exterior appearance, and the natural and man-made environment.

(b) The contractor shall furnish sufficient technical supervision and administrative personnel to insure the proper performance of the services under the contract.

(c) The contractor shall be responsible for the accuracy of all computations and completeness of all studies, designs and plans.

(d) All notes, deliverables, plans, specifications, calculations, field notes, and other data produced in the performance of the contract shall be the property of OTS.

(e) The officer-in-charge shall have access, at all reasonable times, to all notes, designs, drawings, tracings or other technical data pertaining to the services being performed under the contract for the purpose of inspection and making copies of them. Upon completion of the services under the contract, any or all of such notes, studies, designs, drawings, tracings or other technical data shall be delivered and surrendered to the officer-in-charge on demand, provided that copies of notes, studies and other technical data may be delivered and surrendered instead of the originals.

4.4 Change Orders and Modifications Require Approval.

The Contractor will not undertake to perform any portion of the contract work affected by changes until authorized by the Director or an authorized representative in writing or until a change order or modification has been approved and issued.

4.5 Payments.

(a) Payments will be authorized by the Director after completion of performance or delivery and acceptance by the Director of all materials, goods, and services stipulated in the contract or Purchase Order and after the invoices, in triplicate, are received. The invoices must list the following information: contract and confirmation purchase order numbers (if any), item numbers, description of items, quantities, unit prices, and extended totals. Further, in the event that the Contractor is providing equipment under the contract or Purchase Order, the Contractor must also provide the following information with the submittal of its invoices: equipment make, model, serial number, and the specific equipment delivery or installation location, including delivery address and building facility room number, if such information is made available to the Contractor. Various equipment that make up a system shall be listed individually. Providing the aforementioned equipment information is required before payment is made to the Contractor. Payments will be computed in accordance with any applicable unit prices bid. Payments will be made as soon thereafter as the regular course of business will allow; provided, however, that payments shall be made no later than thirty (30) calendar days following receipt of the statement for goods received and services completed.

(b) Unless otherwise specified, partial payment(s) for any item or portion of any item under the contract may be permitted. Said partial payment(s) may be authorized by the Officer in Charge or an authorized representative, provided that delivery and acceptance of the item is made before the contract delivery date and upon submittal of proper invoices and substantiating documents by the Contractor. Said authorization by the Officer in Charge or an authorized representative shall be by endorsement on the submitted invoice; no other action will be required to effect the partial payment(s).

(c) Except for any contract of less than \$25,000, final payment of a contract shall be withheld, until receipt of:

(1) A tax clearance certificate from the Hawaii State director of taxation and the Internal Revenue Service, subject to section 103D-328, HRS, current within two months of issuance date; and a certification (see "Certification of Compliance for Final Payment", attached) from the contractor affirming that the contractor has, as

applicable, remained in compliance with all laws as required by section 103D-310, HRS; or

(2) In lieu of the certificates referenced above, the contractor may make available proof of compliance through a Hawaii state procurement office designated certification process. Hawaii Compliance Express (HCE) may be used for this purpose. The HCE website is at <https://vendors.ehawaii.gov/hce/splash/welcome.html>

These requirements do not apply to contracts of less than \$25,000, or any small purchase contract; nor do they apply to price or vendor list purchases.

4.6 Payment for Reimbursable Expenses.

Payment requests for all reimbursable expenses shall be accompanied and supported by receipted invoices for all charges. Unless otherwise specified, OTS must approve of all reimbursable expenses in writing. Payment for reimbursable items shall be made for allowable costs as specifically notated herein.

Reimbursable amounts stated in the contract shall not be exceeded without a contract amendment. Any balance remaining from the reimbursable expense funds at the completion of the Agreement shall revert to OTS.

Chapter 5 - Disputes and Remedies

5.1 Contractors Responsibilities Under Suspension of Work.

(a) Contractor's Responsibilities. In case of suspension in the performance of the work under the contract from any cause whatsoever, the Contractor in addition to being responsible for performing the work under the contract shall:

- (1) Continue to indemnify and save OTS and its officers and employees harmless from liability for any injury or damage occurring during the period that the performance of the contract is suspended;
- (2) Be responsible for all materials and equipment delivered to the site of the project, including materials and equipment for which Contractor has received partial payment;
- (3) Properly store the materials and equipment which have been partially paid for by OTS or which have been furnished by OTS;
- (4) Remove immediately as directed by the Officer-in-Charge all surplus materials, equipment, and rubbish;
- (5) Neatly and compactly store all materials and equipment on the site of projects within public highways or streets so as not to impede traffic or interfere with the use of public utilities or facilities;
- (6) Provide suitable drainage and erect such temporary structures as are necessary to protect the project or parts of the project from damage;
- (7) Properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedlings, and sodding furnished under this contract; and
- (8) Continue to maintain liability insurance coverages.

5.2 Default.

Any of the following causes may be deemed by OTS to be a default and result in Contractor's termination under the contract:

- (1) Failure to commence work within the time specified in the notice to proceed;
- (2) Failure to perform the work with sufficient workers and equipment or with sufficient materials to assure the prompt completion of said work;
- (3) Failure to comply with orders of the Officer-in-Charge;
- (4) Discontinuation of the prosecution of the work;
- (5) Failure to resume work which has been discontinued within a reasonable time after notice to resume;
- (6) Insolvency or is declared bankrupt, or commits any act of insolvency or bankruptcy;
- (7) Allows any final judgment to stand against the Contractor unsatisfied for a period of ten days;
- (8) Assignment for the benefit of creditors;
- (9) Unauthorized changes in the subcontractor listing submitted with the Contractor's proposal; or
- (10) Failure to correct deficiencies or to complete the contract.

5.3 Dispute/Final Decision.

(a) When a controversy cannot be resolved by mutual agreement between the Officer-in-Charge and the Contractor, at the written of the Contractor, the Director shall issue a written decision within ninety calendars after receipt of the request for a final decision.

(b) Any such decision shall be final and conclusive, unless fraudulent, or unless the Contractor brings an action seeking judicial review of the decision in the circuit court of this State within 6 months from the date of receipt of the decision by the Contractor.