

**STATE SYSTEM OF HIGHER EDUCATION
COMMONWEALTH OF PENNSYLVANIA**

**GENERAL CONDITIONS
FOR THE
CONSTRUCTION CONTRACT**

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ARTICLE 1 - DEFINITIONS

- 1.1** As used in these General Conditions, and in the Contract Documents, the following terms are defined herein, unless the context clearly dictates otherwise.
- a. Contract means the Contract for construction, of which these General Conditions are made a part. The documents comprising the complete Contract Documents are defined in the Standard Form of Contract.
 - b. Contract Sum, or Contract Price, is the dollar amount stated in the Standard Form of Contract, including any changes authorized by fully-executed Change Orders, and is the total amount payable by the System to the Contractor for performance of the Work under the Contract.
 - c. Contract Time is the time allowed for substantial completion of the Work, including any changes authorized by fully-executed Change Orders.
 - d. Amendment is a written order to the Contractor, signed by the System and by all necessary Commonwealth officials as provided by law, and issued after the execution of the Contract, authorizing a change in the terms and conditions of the Standard Form of Contract and/or the General Conditions, and/or any other Contract Documents providing terms and conditions. The Contract terms and conditions may be changed only by Amendment.
 - e. Change Order is a written order to the Contractor, signed by the System, and issued after the execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum and/or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order.
 - f. Contractor shall be the entity with whom the System has entered into this Contract to construct the Project in accordance with the Contract Documents.
 - g. Separate Prime Contractors are the entities with whom the System enters into contracts to construct the Project in accordance with the Contract Documents, in accordance with Act 104/Public Law 155 of 1913. "Separate Prime Contractors" is typically differentiated from "Contractor" to indicate contractors other than the specific Contractor with whom the System has entered into the Contract at hand.
 - h. Subcontractor is a person or entity who has contracted to furnish labor or materials, or has contracted to furnish labor, for a contractor or another subcontractor in connection with the Project.
 - i. Supplier is a person or entity who is providing materials or equipment, or construction equipment or machinery, but not labor, for a contractor or a subcontractor in connection with the Project.
 - j. System means the State System of Higher Education, Commonwealth of Pennsylvania; the Office of the Chancellor of the State System of Higher Education; University or Universities of the State System of Higher Education; or any authorized representative of any of them, entering into the Contract.
 - k. Substantial Completion is when the Work is sufficiently completed in accordance with the Contract Documents, changed as authorized by fully-executed Change Orders, and certified by the System, so that the Project can be used, occupied, and/or operated for its intended use. In no event shall the project be certified as Substantially Complete until at least ninety percent (90%) of the Work on the Project is complete.
 - l. Project is the total effort of construction, renovation, improvement, addition to, and/or repair of a facility. The total effort is comprised of one or more construction contracts, one of which is the Contract, plus other necessary contracts, agreements, and purchases for design, management, and equipment, and possibly for furniture and furnishings.

m. Work means all labor, materials, and equipment, along with the necessary supervision, required and incorporated to complete the construction, renovation, improvement, addition to, and/or repair of a facility specified in, and according to, the Contract Documents.

ARTICLE 2 - GENERAL PROVISIONS

2.1 CONTRACT DOCUMENTS

- 2.1.1 The Contract Documents are defined in the Standard Form of Contract.
- 2.1.2 The Contract can be changed by either: (1) an Amendment, or (2) a Change Order. The Contract may be changed only after the Contract has been properly executed by all necessary Commonwealth officials as provided by law. Changes within the scope of the Contract may be ordered by the System. Changes not within the general scope of the Contract must be agreed upon by both parties.
- 2.1.3 The Contract Documents are complementary, and what is required by any one of the Contract Documents shall be binding as if required by all. Work not covered under any heading, section, branch, class, or trade of the specifications need not be supplied unless it is required elsewhere in the Contract Documents or is reasonably inferable therefrom as being necessary to produce the intended results. Work shown on the drawings is required even if not covered under a specification section. If there is a conflict between the drawings and the specifications, the specifications shall prevail. Words that have well-known technical or trade meaning are used herein in accordance with such recognized meanings. Where the Work is shown in complete detail on only half or a portion of a drawing or there is an indication of continuation, the remainder being shown in outline, the Work drawn out in detail shall be understood to apply to other like portions of the Project.
- 2.1.4 The intent of the Contract Documents is to describe a functionally complete Project composed of functionally completed systems. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result of a completed system shall be furnished and performed whether or not specifically called for.
- 2.1.5 No additions to the Contract Sum will be approved for any labor, equipment, and/or materials to perform Work hereunder unless it can be clearly shown to be beyond the scope and intent of the drawings and specifications and to be absolutely essential to the proper execution of the Work.
- 2.1.6 All drawings, specifications, and copies thereof furnished by the System are and shall remain the property of the System. They are not to be used on any other project, without permission of the System, and, with the exception of one Contract set for each party to the Contract, are to be returned to the System upon request at the completion of the Work.

ARTICLE 3 - THE SYSTEM

3.1 RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out Work in accordance with the Contract Documents, the System may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the System to stop the Work shall not give rise to a duty on the part of the System to exercise this right for the benefit of the Contractor or any other person or entity.

3.2 RIGHT TO CARRY OUT THE WORK

If the Contractor fails to satisfactorily carry out the Work in accordance with the Contract Documents or fails to perform any provision of the Contract, the System may, after three (3) working days written notice to the Contractor, and without prejudice to any other remedy the System may have, make good such failures. In such case, an appropriate change order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such failures, including the cost for the additional services by the Professional or any of the other representatives of the System made necessary by such failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor and/or the Contractor's Surety shall pay the difference to the System.

3.3 RIGHT TO AWARD CONTRACTS

The System reserves the right to award other contracts in connection with other portions of the Project under similar conditions of this Contract.

3.4 REPRESENTATIVES

- 3.4.1 Representatives designated by the System will have the authority to enforce the Contract, to include inspecting the Work and rejecting all Work not in accordance with the Contract Documents. The System's Representatives may be System staff, the Professional, a Construction Manager, and/or other individuals or parties retained for such purpose.
- 3.4.2 Only those representatives so designated have authority to change, modify, or alter the Work or incur or cause to be incurred additional obligations beyond the Contract provisions.
- 3.4.3 The System may retain and designate other representatives, to include but not limited to Inspection and Testing firms, Commissioning Agents, and special consultants, to act as representatives for the System in the administration of specific aspects of the Contract. They may perform functions as determined by their agreements with the System.
- 3.4.4 In the event the System retains and designates more than one representative, and that directions, instructions, or interpretations given by those representatives are in conflict, the Contractor shall, within three (3) days but before any Work addressed in the conflicting directions, instructions, or interpretations is performed, bring the conflict to the attention of those representatives for resolution. In the event those representatives do not resolve the conflict, the Contractor shall bring the conflict to the attention of the System for resolution.

3.5 THE PROFESSIONAL

- 3.5.1 If retained and so designated by the System, a Professional architect or engineer may act as representative for the System in the administration of the Contract and may perform any or all of the functions herein, as determined by the Professional's agreement with the System.
- 3.5.2 The Professional has the authority to visit the Project site to review progress in accordance with the Contract drawings and specifications, attend job conferences, make progress reports to the System, review and accept/reject the Contractor's Schedule of Values, approve the Contractor's applications for payment, interpret technical aspects of the Contract Documents, reject Work which does not conform to the Contract Documents, review and approve submittals, review and provide an evaluation of the Contractor's Quality Control program, prepare drawings and specifications for change orders, review and accept the Contractor's proposals for change orders, prepare punchlists, participate in punchlist and completion inspections, and review and approve operating and maintenance instructions, warranties, and related documents required by the Contract.

- 3.5.3 The Professional may have additional authorities and perform additional functions as determined by the System necessary to protect the System's interest.

3.6 THE CONSTRUCTION MANAGER

- 3.6.1 If retained and so designated by the System, a Construction Manager may act as a representative for the System in the administration of the Contract and may perform any or all of the functions stated herein, as determined by the Construction Manager's agreement with the System.
- 3.6.2 The Construction Manager may perform any of the same actions the Professional has the authority to perform, either independent of or in conjunction with the Professional.
- 3.6.3 If given the responsibility by the System, the Construction Manager may perform any of the functions of System staff, except those functions expressed reserved for the Contracting Officer.
- 3.6.4 If given the responsibility by the System, the Construction Manager may assist in coordination of the activities of the various Separate Prime Contractors, as well as any other contractors, all of whom shall cooperate with him/her. Such coordination may include participation in the development, review, revision, and/or maintenance and updating of the Project construction schedule. Unless expressly provided for in Specification Section 013200, Construction Progress Documentation, the Construction Manager will not have control over or be responsible for the Project construction schedule itself, nor for the execution of the Work in accordance with the approved Project construction schedule, nor over construction means and methods.

ARTICLE 4 - THE CONTRACTOR

4.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS

- 4.1.1 The Contractor shall perform the Work according to good quality industry standards, practices, and procedures, and in accordance with the Contract Documents and approved submittals.
- 4.1.2 The Contractor shall accept all conditions as found upon examination of the site, and take field measurements and verify field conditions and compare carefully such measurements and conditions with the Contract Documents before commencing activities. If the Contractor, in the course of construction, finds any conflict, error, or discrepancy on or among the Contract Documents, such conflict, error, or discrepancy shall be immediately referred to the System in writing.
- 4.1.3 On all Work of a remodeling nature or installation within existing facilities, the actual situation at the site controls any information given which may affect the quantity, size, and quality of materials required for a satisfactorily completed Contract, whether or not such information is indicated on the drawings or within the specifications.
- 4.1.4 If subsurface exploration, drilling, and/or testing was performed at the Project site, and if information resulting from that exploration, drilling, and/or testing was available to the Contractor by its inclusion in the Technical Plans and Specifications, then the following applies. Notwithstanding anything to the contrary contained in the Contract Documents, and notwithstanding anything to the contrary contained in the subsurface exploration, drilling, and/or testing reports themselves, such subsurface exploration, drilling, and/or testing reports provided are for informational purposes only, and nothing contained in them shall be deemed to be a representation or warranty with respect to the condition of the Project site and/or any Work required to be performed in connection with the excavation thereof.

4.2 SUPERINTENDENCE AND MANAGEMENT

- 4.2.1 Unless Specification Section 011000, Summary, of this Contract contains other requirements for superintendence and/or management, the Contractor shall comply with the provisions below.
- 4.2.2 Superintendence. At all times during performance of the Work at the Project site, and until the Work is completed and accepted, the Contractor shall have on site a duly authorized and competent superintendent who shall directly supervise the Work. Direct supervision shall be required any time that the Contractor or any of its subcontractors are carrying out Work on the site. Communications given by the System at the Project site to the superintendent shall be as binding as if given to the Contractor. If the Contractor has more than one Separate Prime Contract, the Contractor shall provide a separate superintendent for each Separate Prime Contract. The superintendent shall be acceptable to the System. The System may require the submission of a resume or statement of qualifications for the proposed superintendent. The Contractor shall not change the assigned superintendent without approval of the System. Such approval shall not be unreasonably withheld.
- 4.2.3 Management. For the duration of the Contract, and until all Contract requirements are completed and final payment is made, the Contractor shall have a duly authorized and qualified project manager for the Contract. The project manager shall be the primary point of contact between the Contractor and the System, and between the Contractor and the design Professional. The project manager shall have the full authority to make decisions and approve Contract changes for the Contractor. If the Contractor has more than one Separate Prime Contract, the Contractor shall provide a separate project manager for each Separate Prime Contract. The project manager shall be acceptable to the System. The System may require the submission of a resume or statement of qualifications for the proposed project manager. The Contractor shall not change the assigned project manager without the approval of the System. Such approval shall not be unreasonably withheld.

4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

- 4.3.1 The Contractor shall supervise and direct the Work using the Contractor's best skill and attention to complete the Work in an acceptable manner and in accordance with the Project Schedule (see Article 4.7 Project Schedule). The Contractor shall be solely responsible for the Work performed and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work, unless the Contract Documents give other instructions.
- 4.3.2 The Contractor shall be responsible for the acts and omissions of all of its employees, all subcontractors and their agents and employees, and all other persons performing portions of the Work under an agreement with the Contractor.

4.4 LABOR AND MATERIALS

- 4.4.1 The Contractor shall enforce strict discipline and good order and conduct among its employees and other persons carrying out the Work. Every employee shall be fit and skilled in the performance of tasks assigned to them. The Contractor shall comply with reasonable directives given by the System, or by its representatives, concerning interaction with System employees and students, and with the general public.
- 4.4.2 This Contract may be subject to the provisions, duties, obligations, remedies, and penalties of the Pennsylvania Prevailing Wage Act (43 P.S. § 165-1, et seq.), as amended, which is incorporated herein by reference as if fully set forth herein.
- 4.4.3 The System anticipates the Contractor will provide products (i.e., products, materials, and equipment as defined in Specification Section 016100, Common Product Requirements) to be incorporated into the Work. Products shall meet or exceed the quality specified in the Contract

Documents, and shall be new, undamaged, and unused at the time of installation, unless otherwise indicated in the Contract Documents or authorized by the System as a substitution after the Effective Date on this Contract. The Contractor shall produce, upon request, evidence supporting the source of materials used in the Work. The burden of proof of quality for all products provided rests with the Contractor. The costs incurred for substantiating quality shall be borne by the Contractor. If the System accepts substituted products of a lesser quality than specified, the System shall be entitled to a credit equal to the difference in cost of the products specified and the products provided, to include any difference in the cost of delivery, storage, handling, and installation. For any substituted products, the Contractor shall fully warrant and guarantee for the benefit of the System the effectiveness, fitness for the purpose intended, quality, and merchantability of the substituted product. Specification Section 016200, Product Options, provides requirements for requests for substitutions.

4.5 TAXES

Contractor shall pay all sales, consumer, use, and other similar taxes as required by law. Since the System is an instrumentality of the Commonwealth of Pennsylvania, the sale at retail to or use by a construction contractor of certain building machinery and equipment and services thereto that are transferred to the System may possibly be excluded from some or all of such taxes. Forms and directions on the manner of obtaining exclusions from sales taxes may be obtained from the Pennsylvania Department of Revenue.

4.6 UNIFORM CONSTRUCTION CODE; PERMITS, FEES, AND NOTICES

- 4.6.1 Under the Pennsylvania Uniform Construction Code (UCC), all System facilities fall under the jurisdiction of only the Pennsylvania Department of Labor and Industry (L&I) for plan review and inspection. Local authorities have no jurisdiction for building permits on System facilities. The System through its Professional is responsible for obtaining the Building Permit. A copy of the Building Permit, which includes a list of the required inspections, is available from the System or its Professional.
- 4.6.2 The Contractor shall become familiar, and is responsible for complying, with all aspects of the UCC. For purposes of UCC inspections, the Contractor shall be deemed the "owner" as described in the UCC. Each Separate Prime Contractor shall include in the Project Schedule the UCC inspections applicable to their Work. Each Contractor shall be responsible to contact L&I to schedule the required inspections in accordance with the inspection procedures outlined in the Building Permit. Each Contractor shall notify the System of all scheduled inspections and shall inform the System in writing of the results of all inspections.
- 4.6.3 The Contractor shall complete in a timely manner all Contract requirements necessary for the Project to receive a Certificate of Occupancy.
- 4.6.4 Unless otherwise called for by the Contract, the System will obtain any required zoning or land use permits from the local municipality having jurisdiction.
- 4.6.5 Unless otherwise called for by the Contract, the System will obtain any required storm water or other environmental permits from the governmental agency having jurisdiction. The Contractor shall comply with any and all requirements of those permits. The Contractor also may be required to be a Transferee/Co-Permittee on the NPDES permit.
- 4.6.6 The Contractor shall obtain and pay for all other permits, licenses, and certificates required by Law and/or any public authority for the proper execution and completion of its Work. The Contractor shall furnish proof of payment for all such permits, licenses, and certificates, or proof that no permits, licenses, or certificates are required.
- 4.6.7 The Contractor shall give all notices and comply with all applicable Laws, ordinances, regulations, rules, and orders of any public authority bearing on the performance of the Work. If the Contractor observes that any of the Contract Documents is at variance therewith in any

respect, it shall promptly notify the System in writing. If the Contractor performs any Work knowing it to be contrary to such applicable laws, ordinances, regulations, rules, or orders, and without such written notice to the System, the Contractor assumes full responsibility therefor and shall bear all costs attributable thereto.

- 4.6.8 The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save the System harmless from loss on account thereof. The System shall be responsible for all such loss when a particular design, process, or the product of a particular manufacturer or manufacturers is specified. However, if the Contractor has reason to believe that the design, process, or product specified is an infringement on a patent, it shall be responsible for such loss unless it promptly gives such information to the System.

4.7 PROJECT SCHEDULE

- 4.7.1 The Contractor shall comply with the Project Schedule requirements specified in Specification Section 013200, Construction Progress Documentation. If a Section 013200 is not provided, the Contractor shall comply with the provisions below.
- 4.7.2 Within seven (7) days following receipt of Notice to Proceed, the Lead Prime Contractor (see Specification Section 011000, Summary) shall furnish to the System and to any and all other Separate Prime Contractors a practicable schedule of the proposed prosecution of the Work, and the planned dates on which salient features of the Work will start and complete. The Project Schedule shall be coordinated with and accepted and signed by any and all other Separate Prime Contractors, and submitted to the System for review and approval not later than fourteen (14) days after Notice to Proceed.
- 4.7.3 The Contractor shall complete portions of the Work in such order of time as may be stated in the Contract Documents or as required in the approved Project Schedule. If the Contractor fails to process the Work according to the approved Project Schedule, the System may require the Contractor to take necessary steps to recover and maintain the Project Schedule, at no additional cost to the System. Necessary steps may include, but are not limited to, additional resources, additional shifts, or overtime operations. If the Contractor refuses or fails to proceed as directed by the System, the System has the right to carry out the Work, and may find the Contractor in breach of its Contract and/or declare the Contractor in default.

4.8 SUBMITTALS

- 4.8.1 The Contractor shall prepare and process, in accordance with Specification Section 013300, Submittal Procedures, submittals, consisting of the necessary shop drawings, coordination drawings, product data, samples, and other information required to identify the proposed equipment and materials, to support the proposed installation methods, and to establish standards by which the Work will be judged. The preparation and processing of submittals shall not delay the Project or require a time extension to the Contract Time, unless agreed to by the System.
- 4.8.2 The System's review and approval of a submittal is for conformance with the information given in the Contract Documents and with the design concept of the Project. Approval does not relieve the Contractor of the responsibility for compliance with Contract requirements or with statutory or regulatory requirements. Moreover, the Contractor is responsible for dimensions, quantities, details and connections, fabrication, construction methods, and coordination of trades required for satisfactory construction of all Work.
- 4.8.3 No portion of the Work requiring a submittal shall be commenced until the submittal has been approved by the System. Any Work commenced by the Contractor prior to approval of the submittal is performed by the Contractor at its own risk.

4.9 JOB CONDITIONS

- 4.9.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, and the Contract Documents, and shall not unreasonably encumber the site with any materials or equipment, unless otherwise permitted by the System. The Contractor shall at all times keep the work site free from accumulation of waste materials or rubbish created by its operations.
- 4.9.2 The site of the Work is defined by the Limit of Contract line shown on the drawings. The Contractor may only extend its Work beyond this line as may be necessary to satisfy requirements of all permits and to make utility and service connections. Before starting any Work beyond the Limit of Contract, the Contractor shall submit to the System a description of the proposed Work for their review and approval.
- 4.9.3 The Contractor shall cooperate in the arrangements of the Work, as necessary, to least affect the administration or operation of any present facility. Existing utility services roads and access ways shall not be interrupted without prior approval by the System. The Contractor shall comply with the System's prescribed times for acceptable outage periods.
- 4.9.4 The Contractor shall at all times afford other contractors reasonable access to the site and material storage areas, and shall perform its Work so as not to interfere with the work of other contractors.
- 4.9.5 The Contractor shall be responsible for providing temporary heat, light, and water as necessary to execute and protect the Work, and shall maintain adequate ventilation of the work site to ensure proper air quality for human breathing and safe equipment operations. Specific requirements may be provided elsewhere in the Contract Documents, including, but not limited to, Specification Section 015000, Temporary Facilities and Controls.
- 4.9.6 The Contractor shall protect the Work and stored materials. Specific requirements may be provided elsewhere throughout the Contract Documents.

4.10 CONTRACTOR EVALUATIONS

The Contractor, by entering the Contract, consents to the evaluation of its performance by the System, or its representatives, and the Contractor understands that any such evaluation may be used in future procurements to determine the Contractor's responsibility. The System, or its representatives, shall provide the Contractor with notice of any unsatisfactory evaluations and the reasons therefore. In such cases, the Contractor shall be entitled to submit a reply.

ARTICLE 5 - SUBCONTRACTORS

5.1 SUBCONTRACTS

- 5.1.1 Subcontractors employed by the Contractor are solely responsible to the Contractor, and shall have no contractual relationship with the System.
- 5.1.2 All Work performed for the Contractor by a subcontractor shall be pursuant to an appropriate agreement between the Contractor and the subcontractor. All agreements between Contractors and subcontractors shall contain provisions requiring all of the following rights and responsibilities:
- a. Preserving and protecting the rights of the System under the Contract with respect to the Work to be performed under the subcontract, so that the subcontracting thereof will not prejudice such rights.
 - b. Requiring that the Work be performed in accordance with the terms, conditions, and requirements of the Contract Documents.

- c. Requiring that all claims for additional costs, extensions of time, or otherwise, with respect to subcontracted portions of the Work, be submitted to the Contractor in the manner provided in the Contract Documents for like claims by the Contractor upon the System.
 - d. Requiring that each subcontractor and/or supplier fully warrant and guarantee for the benefit of the System as purchaser the effectiveness, quality, and merchantability of any item provided and/or installed by such subcontractor.
 - e. Requiring that the subcontractor is without privity of Contract to the System and that it agrees by signing the subcontract that it neither acquires nor intends to acquire any rights against the System on a third party beneficiary theory or any others.
- 5.1.3 The Contractor shall not sublet any part of this Contract without written approval of the System. Within thirty (30) days after contract award, or within seven (7) days after Notice to Proceed, whichever is sooner, the Contractor shall furnish to the System, for approval, a list of all subcontractors and suppliers it proposes to use under the Contract.
- 5.1.4 A Contractor may not, except with the consent of the System, have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this Project. Failure to disclose the names of such subcontractors and/or suppliers shall be sufficient grounds for termination of this Contract. Such failure may also be grounds for the initiation of civil or criminal proceedings.
- 5.1.5 The System has the right to direct the Contractor to replace any subcontractor to which the System objects for any of the following reasons:
- a. The subcontractor has failed to work in accordance with the Contract provisions, rules, and regulations regarding Contractor performance, Contract Compliance, or good order and conduct of its employees.
 - b. The subcontractor has defaulted or failed to perform on previous System projects.
 - c. The subcontractor has been suspended or debarred from doing business with the Commonwealth.

ARTICLE 6 - CHANGES IN THE WORK

6.1 CHANGE ORDERS

- 6.1.1 The System, without invalidating the Contract, and without notice to the Sureties, may, by written order, order changes in the Work within the general scope of the Contract, consisting of additions, deletions, or other revisions. All such changes shall be implemented by a Change Order.
- 6.1.2 Change Orders shall adjust the Contract Sum and Contract Time accordingly, as they relate to the cost of the Work and the cost of any impacts to the Work, and to the impact on timely completion of the Work. Costs and impacts shall include any and all costs associated with acceleration, stacking, and re-sequencing of the Work required to maintain the Project Schedule. If it is not possible to complete the Work in accordance with the Project Schedule and/or the Contract Time by the acceleration, stacking, or re-sequencing, the Contractor may request an extension of time. Adequate information and proper submission must be provided to validate such a request.
- 6.1.3 The Contractor agrees that payment under any method noted within this Contract shall be the exclusive compensation for such addition, deletion, or other revision to the original Contract, and that by signing a Change Order, the Contractor agrees to release and waive any and all claims related to that Change Order or the Work contained therein.
- 6.1.4 When the System and the Contractor are not in total agreement on the terms of a Change Order, or when the amount or extent of the Work related to the Change Order is not known,

the System may issue a unilateral change order, or a Construction Change Directive, directing the Contractor to proceed with a change in the Work. In such cases, the Contractor must proceed with the Work but shall have the right to request an adjustment to the Contract Sum and Contract Time. In such cases, requests for adjustment to the Contract Sum and/or Contract Time must be accompanied by supporting documentation of incurred costs/time.

- 6.1.5 Minor changes in the Work not affecting the Contract Sum or Contract Time, consistent with the intent of the Contract Documents, may be directed by the System without additional compensation or time extension.

6.2 REQUESTS FOR ADDITIONAL COST OR TIME

- 6.2.1 If the Contractor desires an increase in the Contract Sum, written notice shall be given to the System before proceeding to execute any Work which is the subject of the desired increase. Such request shall be in accordance with Specification Section 012600, Contract Modification Procedures, or other similar formal System procedures.
- 6.2.2 If the Contractor desires an increase in Contract Time, written notice shall be given to the System, including an estimate of the probable impact on the timely completion of the Work and of any cost associated with that impact.

6.3 CONCEALED OR UNKNOWN CONDITIONS

- 6.3.1 If conditions are encountered which are: (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in work of the character provided for in the Contract Documents, then the Contractor shall give written notice to the System promptly, and before conditions are disturbed, and in no event later than seven (7) days after first observance of the conditions.
- 6.3.2 The System will promptly investigate such conditions. If conditions differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, the System will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the conditions at the site are not materially different from those indicated in the Contract Documents, no change in the terms of the Contract is justified. No adjustment shall be made to the Contract Sum and/or Contract Time, however, for concealed conditions encountered during cutting and patching of Work.

ARTICLE 7 - TIME

7.1 CONTRACT TIME

- 7.1.1 Time is of the essence. The Contractor shall prosecute the Work diligently and substantially complete the Work in accordance with the Contract Time specified in the Standard Form of Contract.
- 7.1.2 No on-site Work may take place until Notice to Proceed is issued by the System.
- 7.1.3 If the System issues a Binding Letter of Intent to Contract prior to Notice to Proceed, the Contractor may rely on the letter to prepare to start Work to the extent authorized by the letter and incur costs in preparation for performance of the Contract.
- 7.1.4 The Contract Time anticipates inclement and/or adverse weather, and the Contractor shall plan accordingly. Inclement or adverse weather, including but not limited to cold or freezing weather, shall not be considered an excuse for non-performance of Work under this Contract. The

Contractor shall use such methods of protection as may be necessary to continue to work throughout the period of inclement or adverse weather.

7.2 ADJUSTMENTS TO THE CONTRACT TIME

- 7.2.1 A time extension for an ordered change in the Work will depend upon the extent, if any, by which the change causes delay in completion of the various elements of construction. Normally a time extension will be granted if the changed Work impacts a Work item on the critical path of the Project Schedule and the scheduled completion date is impacted. For an ordered change in the Work that can reasonably be done concurrent with other Contract Work, without significant addition of labor or equipment, no time extension will be granted.
- 7.2.2 A change order granting a time extension may provide that the Contract Time will be extended only for those specific elements related to the changed Work and that the remaining Contract Time for all other portions of the Work will not be changed.

7.3 NO-FAULT TIME EXTENSIONS

- 7.3.1 If delays in completing the Work arise from unforeseen causes beyond the control and without the fault or negligence of either the Contractor or the System, the System may, in its sole discretion, grant a time extension for any such delays by extending the time for completion of the Work, which extension shall constitute the exclusive remedy between the parties. Examples of such causes include, but are not limited to, acts of God, acts of or protection against a public enemy, acts of the Commonwealth in its sovereign capacity, changes in any controlling law or policy of any governmental entity, acts of another contractor in its performance of an agreement with the System, strikes, embargoes, and unusually severe weather. Any such time extension must meet the criteria under Article 7.2.
- 7.3.2 If unusually severe weather is the basis for Contractor's request for additional time, such request shall be documented by data from a recognized weather authority substantiating that weather conditions were abnormal for the period and could not have been reasonably anticipated. The Contractor shall also substantiate that the unusually severe conditions had an adverse impact on the scheduled completion date.

ARTICLE 8 - SUSPENSION OF THE WORK

8.1 SUSPENSION OF THE WORK

- 8.1.1 The System may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for such period of time as it may determine to be appropriate for the convenience of the System.
- 8.1.2 If the performance of all or any part of the Work is, for an unreasonable period of time, suspended, delayed, or interrupted:
- a. by an act of the System in the administration of this Contract, or
 - b. by the System's failure to act within the time specified in this Contract, or within a reasonable time if not specified,
- an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by such unreasonable suspension. The Contract shall be modified in writing accordingly. No adjustment shall be made under this clause for any suspension to the extent that performance would have been so suspended by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other provision of this Contract.

8.1.3 No claim under this clause shall be allowed unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension. The claim may not be asserted later than the date of final payment.

8.1.4 The provisions of this Article 8.1 do not apply under conditions enumerated in Article 8.2 or Article 8.3.

8.2 SUSPENSION OF THE WORK DUE TO UNFAVORABLE CONDITIONS

8.2.1 If, in the judgment of the System, the Contractor is taking undue risk of damage to any part of a structure or installation by proceeding with the Work during unfavorable weather or other conditions, then the System may suspend the Work temporarily, either wholly or in part for such periods as are necessary. In case of such suspension, the System may, in its sole discretion, grant a time extension for any such delays by extending the time for completion of the Work, which extension shall constitute the exclusive remedy between the parties. The failure of the System to suspend the Work does not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents.

8.2.2 The System may require a suspension of the Work if, in its opinion, unforeseen conditions warrant such stoppage. When the System directs resumption of the Work, the Contractor shall resume full operations within a period of seven (7) days after the date of written notice to do so. The System is not liable for any damages, lost overhead, or anticipated profits on account of the Work being suspended.

8.2.3 Any Work done by the Contractor during the period of suspension is its own responsibility. The Contractor shall receive no payment for the Work unless the Work is subsequently resumed and Work done during the suspension can be utilized in the resumed Work.

8.2.4 Suspensions of Work as outlined above shall not in themselves operate to extend the Contract date of completion. Requests for extensions of time shall be submitted in writing by the Contractor, setting forth its reasons for the extension.

8.3 SUSPENSION OF THE WORK FOR FAULT OF THE CONTRACTOR

Should the Contractor fail to comply with the orders of the System relative to any particular parts of the Work, the System may suspend Work on any or all parts of the Work until its orders respecting the particular parts are complied with. In case of such suspension, which shall be considered due to the fault of the Contractor, no extension of time shall be given and no allowance will be made for the expenses incurred by the Contractor during the suspension period.

8.4 SUSPENSION OF THE WORK FOR FAULT OF OTHER SEPARATE PRIME CONTRACTORS

If the performance of all or any part of the Work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of another Separate Prime Contractor, or by another Separate Prime Contractor's failure to act within the time specified in this Contract, or within a reasonable time if not specified, the System may, in its sole discretion, grant a time extension for any such delays by extending the time for completion of the Work, which extension shall constitute the exclusive remedy between the parties. Otherwise, Disputes with other Separate Prime Contractors is addressed in Article 13.5.

ARTICLE 9 - PAYMENTS

9.1 PAYMENTS

- 9.1.1 Performance by the Contractor in accordance with the requirements of the Contract Documents shall entitle the Contractor to payment by the System. Normally, payment for the Work will be made upon substantial completion and acceptance of the Work. However, when a contract exceeds \$25,000 and upon written request, partial payments may, at the discretion of the System, be made after completion of portions of the Work.
- 9.1.2 The System shall pay the Contractor according to the provisions of this Article for all items that appear on the application for payment and have been satisfactorily completed. Applications for payment will not be considered to be acceptable unless they meet all the requirements specified in Specification Section 012900, Payment Procedures, and as outlined elsewhere in the Contract Documents.
- 9.1.3 Before any application for payment can be submitted and/or approved, the Contractor shall submit to the System for its approval a detailed breakdown of the costs indicating a schedule of quantities and values for the items of Work included in the Contract, as required in Specification Section 012900, Payment Procedures.
- 9.1.4 The Contractor warrants and guarantees that title to all Work, materials, and equipment covered by an application for payment, whether incorporated in the Project or not, will pass to the System upon the receipt of such payment, free and clear of all terms, claims, security interests, or encumbrances. Such warrant and guarantee shall not relieve the Contractor from the sole responsibility for all material and Work upon which payments have been made, or the restoration of damaged Work, or waive the right of the System to require the fulfillment of the terms of the Contract.
- 9.1.5 The System may decline to approve any application for payment, or portion thereof, because of subsequently discovered evidence or subsequent inspections which may nullify the whole or part of any application for payment previously issued, to such extent as may be necessary to protect the System from loss because of:
- (1) defective Work not remedied,
 - (2) failure of the Contractor to make payments properly to subcontractors or for labor, materials, and equipment,
 - (3) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum,
 - (4) reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay, or
 - (5) unsatisfactory execution of the Work by the Contractor.

9.2 RETAINAGE

- 9.2.1 To ensure proper performance of the Contract, the System may retain from all partial payments an amount not to exceed ten percent (10%) of the amount due the Contractor until fifty percent (50%) of the Contract is completed. When the Contract is fifty percent (50%) completed, one half of the amount retained by the System shall be returned to the Contractor. However, the System or their representative must approve the reduction in retainage. The Contractor must be making satisfactory progress, and there must be no specific cause for greater withholding. The sum to be withheld from the Contractor after the Contract is fifty percent (50%) completed shall not exceed five percent (5%) of the value of the completed Work based on monthly progress payment requests. All money retained by the System may be withheld from the

Contractor until substantial completion.

- 9.2.2 In the event a dispute arises between the System and any Separate Prime Contractor, which dispute is based upon increased costs claimed by one Separate Prime Contractor occasioned by delays or other actions of another Separate Prime Contractor, additional retainage in the sum of one and one-half times the amount of any possible liability may be withheld until such time as a final resolution is agreed to by all parties directly or indirectly involved, unless the Contractor causing the additional claim furnishes a bond satisfactory to the System to indemnify the System against the claim.
- 9.2.3 In absence of sufficient reason, within 20 days of receipt of payment of retainage, the Contractor shall pay all subcontractors with which it has contracted their earned share of the retainage payment the Contractor received.

9.3 WITHHOLDING OF PAYMENTS FOR DEFICIENCY ITEMS

- 9.3.1 A deficiency item is Work performed but which the System, one of the System's representatives, the Contractor, or another authorized inspector will not certify as being completed according to the Contract Documents.
- 9.3.2 The System may withhold from any and all partial payments, in addition to retainage identified in Article 9.2, a reasonable amount for a deficiency item. If the System withholds money for a deficiency item, the System shall notify the Contractor of the deficiency item within the timeframe specified in the Contract or 15 calendar days of the date that the application for payment is received.
- 9.3.3 The Contractor may similarly withhold money from any subcontractor who is responsible for any deficiency item, and must similarly notify the subcontractor, and the System, of the reason within 15 calendar days after receipt of the notice of the deficiency item from the System.

9.4 PROMPT PAYMENT

- 9.4.1 The System shall make payment, less any applicable retainage and withholdings, to the Contractor within 45 days of receipt of a proper application for payment. If payment is not made within 45 days, the System shall pay to the Contractor interest on the amount due in accordance with Chapter 39 of the Commonwealth Procurement Code.
- 9.4.2 For the purposes of this Article, a contract between the Contractor and a subcontractor is presumed to incorporate the terms of the Contract between the Contractor and the System. When a subcontractor has performed in accordance with the provisions of the Contract, a Contractor shall pay to the subcontractor, and each subcontractor shall in turn pay to its subcontractors, the full or proportioned amount received for each such subcontractor's work and material, 14 days after receipt of a progress payment. Neither the System nor any of its representatives shall have any obligation to pay or to see the payment of any monies to any subcontractor except as may be otherwise required by law.
- 9.4.3 The System shall make a substantial completion inspection within 30 days of receipt of a request by the Contractor for such inspection. If the Work is substantially complete, the System shall issue a certificate of substantial completion and, upon receipt of a proper application for payment, make payment in full within 45 days except as provided for in Article 9.2, less only one and one-half times the amount required to complete any then-remaining uncompleted minor items, which amount shall be certified by the System and, upon receipt by the System of any guarantee bonds which may be required, in accordance with the Contract, to ensure proper workmanship for a designated period of time. The certificate of substantial completion given by the System shall list in detail each uncompleted item and a reasonable cost of completion. Upon completion of the uncompleted items listed in the certificate of substantial completion, final payment of any amount withheld for the completion of the minor items shall be paid upon receipt of a proper application for payment.

ARTICLE 10 - COMPLETION AND ACCEPTANCE OF THE WORK

10.1 ACCEPTANCE OF THE WORK

- 10.1.1 An application for progress payment, a progress payment, or any partial or entire use or occupancy of the Project by the System shall not constitute an acceptance of any Work not in accordance with the Contract Documents.
- 10.1.2 The System may occupy or use any completed or partially-completed portion of the Work at any stage when such portion is so designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the System and the Contractor have accepted in writing the responsibilities assigned to each of them for payments, security, maintenance, heat, insurance, etc. Immediately prior to such partial occupancy or use, the System and the Contractor shall jointly inspect the area in order to determine and record the condition of the Work, and agree to the period for correction of this Work and as to the commencement of warranties.

10.2 NO ESTOPPEL OR WAIVER OF LEGAL RIGHTS

- 10.2.1 Neither the System nor its representatives shall be precluded or estopped by the measurements or approved applications for payment made or given by any of them or by any of their agents or employees, at any time, either before or after the completion and acceptance of the Work and payment thereof, from showing the true and correct amount and character of the Work performed and materials and equipment furnished by the Contractor. The System and/or its representatives may show at any time, that any such measurements or approved applications for payment are untrue or incorrectly made in any particular; or that the Work or materials, equipment or any parts thereof do not conform to the Contract Documents.
- 10.2.2 The System shall have the right to reject the whole or any part of the aforesaid Work or materials and equipment should the said measurements or approved applications for payment be found or be known to be inconsistent with the terms of the Contract, or otherwise improperly given. The System shall not be precluded or estopped, notwithstanding any such measurements or approved applications for payment in accordance therewith, from demanding and recovering from the Contractor or its Surety, or both, such damages as it may sustain by reason of the Contractor's failure to comply with the terms of the Contract Documents, or on account of any over-payments made on any approved applications for payment.
- 10.2.3 Neither the acceptance by the System or by any of its representatives, nor any certificate approved for payment of money, nor any payments for, nor acceptance of the whole or any part of the Work by the System, nor any extension of time, nor any position taken by the System or its employees, shall operate as a waiver of any portion of the Contract or any power herein reserved by the System or any right to damages. A waiver of any breach of the Contract will not be held to be a waiver of any other or subsequent breach.

10.3 CORRECTION OF DEFECTIVE OR NON-CONFORMING WORK

- 10.3.1 Work performed under the Contract is subject to inspection by the System. The Contractor shall promptly correct all Work rejected by the System as defective or as failing to conform to the Contract Documents, whether observed before or after substantial completion and whether or not fabricated, installed, or completed. All defective or non-conforming Work shall be promptly removed from the site. The Contractor shall bear all costs of correcting such rejected Work, including any additional costs incurred by the System or its representatives and there shall be no extension of the Contract Time for correcting such rejected Work.

- 10.3.2 The Contractor shall bear the cost of making good all Work of other Separate Prime Contractors destroyed or damaged by such removal or correction.
- 10.3.3 If the Contractor does not remove such defective or non-conforming Work within the time fixed by written notice from the System, the System may, in accordance with Article 3.2, The System's Right to Carry Out the Work, remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the System may, upon ten (10) additional days written notice, sell such Work at auction or at private sale and, after deducting all the costs that should have been borne by the Contractor pursuant to the provisions of this Article, shall account for the net proceeds of the sale. If such proceeds of sale do not cover all costs that the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate change order shall be issued. If the payments then or thereafter due to Contractor are not sufficient to cover such amount, the Contractor and/or the Contractor's Surety shall pay the difference to the System.
- 10.3.4 The obligations of the Contractor under this Article are in addition to and not in limitation of any obligations imposed upon the Contractor by special guarantees required by the Contract Documents or otherwise prescribed by law. Correction of defective Work in no way reduces or eliminates the Contractor's responsibilities under the Warranty provisions of the Contract.

10.4 UNCOVERING OF WORK

- 10.4.1 If a portion of the Work is covered contrary to the request of the System, it must, if required by the System, be uncovered for its observation, and replaced at the Contractor's expense without change in Contract Time.
- 10.4.2 If a portion of the Work has been covered which the System has not specifically requested to observe prior to being covered, the System may request to see such Work, and it shall be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall be charged to the System. If the Work is not in accordance with the Contract Documents, the Work shall be removed and replaced by the Contractor, within the period specified by the System by written notice, at no additional cost to the System. The System may, upon failure by the Contractor to replace the nonconforming Work, have the Work removed and replaced at the Contractor's expense.

10.5 ACCEPTANCE OF NON-CONFORMING WORK

If the System elects to accept non-conforming Work, it may do so instead of requiring its correction or removal and replacement. If nonconforming Work is accepted, a change order shall be issued to reflect an appropriate reduction in the Contract Sum to reflect the actual cost reduction to the Contractor of the change in the Work, or, if the amount is determined after final payment, it shall be paid by the Contractor and/or its Surety. In any event, any costs of uncovering and recovering the Work shall be at the expense of the Contractor.

10.6 WARRANTY OF CONSTRUCTION

- 10.6.1 In addition to any other warranties in this Contract, the Contractor shall warrant, except as provided in Article 10.6.6, that Work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, design furnished, or workmanship performed by the Contractor or any of its subcontractors or suppliers at any tier.

- 10.6.2 This warranty shall be for a period of one (1) year starting at the date of substantial completion of the Work. If the System takes possession of any part of the Work prior to substantial completion, this warranty shall be for a period of one (1) year starting at the date the System takes possession, unless the System and the Contractor agree to another one-year period, or different one-year periods for different portions of the Work.
- 10.6.3 The Contractor shall remedy at the Contractor's expense any defect in the Work or failure to conform to Contract requirements. In addition, the Contractor shall remedy at the Contractor's expense any damage to System-owned or -controlled real or personal property, when that damage is the result of any defect or failure. In fulfilling the terms and conditions of this Article, the Contractor shall restore any Work damaged. And in doing so, the Contractor's warranty with respect to Work repaired or replaced will run for one (1) year from the date of repair or replacement.
- 10.6.4 The System shall notify the Contractor, in writing, within a reasonable time afterward, of the discovery of any failure, defect, or damage. If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the System shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- 10.6.5 With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for Work performed and materials furnished under this Contract, the Contractor shall obtain all warranties that would be given in normal commercial practice, require all warranties to be executed in writing, and enforce all warranties for the benefit of the System, if directed by the System. In the event the Contractor's one-year warranty has expired, the System may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- 10.6.6 Unless a defect is caused by the negligence of the Contractor or any of its subcontractors or suppliers at any tier, the Contractor shall not be liable for the repair of any defect in System-furnished material or design, nor for the repair of any damage that results from any defect in System-furnished material or design.
- 10.6.7 This warranty shall not limit the System's rights with respect to latent defects, gross mistakes, or fraud.

ARTICLE 11 - PROTECTION OF PERSONS AND PROPERTY

11.1 SAFETY AND HEALTH

- 11.1.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety and health precautions and programs required under the Contract and relative to its portion of the Work. The Contractor shall take all reasonable precautions for the safety and health of, and shall provide all reasonable protection to prevent injury or illness to, all employees on the Work, and all other persons who may be affected thereby. The Contractor shall erect and maintain as required by existing conditions and progress of the Work, until the acceptance of the completion of its portion of the Project, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety and health regulations, and notifying owners and users of adjacent utilities.
- 11.1.2 The Contractor shall comply with Federal OSHA regulations and other applicable safety and health regulations. The most stringent standard shall prevail.
- 11.1.3 The Contractor shall designate a qualified member of its organization at the site who shall be responsible for the safety and health program.
- 11.1.4 The Contractor shall comply with Specification Section 013500, Special Procedures, if that Section is included as a part of this Contract.

11.2 PROTECTION OF PROPERTY

The Contractor shall provide all reasonable protection to prevent the loss of or damage to property, including but not limited to:

- (1) any completed Work,
- (2) all the materials and equipment to be incorporated into the Work, whether in storage on or off the site, under the care, custody, or control of the Contractor or any of its subcontractors, and
- (3) other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, buildings, parts of buildings, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

11.3 PROTECTIVE ACTION

In any emergency affecting the safety or health of persons or the damage to or loss of property, the Contractor shall act, at its discretion, to prevent threatened damage, injury, illness, or loss, and report immediately such incidences to the System. Any additional compensation or extension of time requested by the Contractor because of emergency work shall be determined as provided for elsewhere in these General Conditions.

ARTICLE 12 - TERMINATION OF THE CONTRACT

12.1 TERMINATION FOR CONVENIENCE

12.1.1 The System may, at any time and for any reason, terminate this Contract for the convenience of the System.

12.1.2 Such termination shall be effective in the manner and at the time specified in such notice and shall be without prejudice to any claims that the System may have against the Contractor. Upon receipt of such notice from the System, the Contractor shall immediately discontinue all Work and the placing of all orders for materials, equipment, facilities, and supplies in connection with the performance of this Contract. The Contractor shall cancel promptly all existing orders and terminate Work under all subcontracts so far as such orders and Work are chargeable to this Contract. The Contractor shall take such measures for the protection of the property of the System as may be directed by the System.

12.1.3 Upon termination of this Contract, as provided by this Article, full and complete adjustment and payment of all amounts due the Contractor arising out of this Contract, as determined by an audit conducted by or for the System, as soon as practicable after such termination, shall be made as follows.

- a. The System shall reimburse the Contractor for all costs incurred to date of termination, including reasonable overhead and expenses incurred in the performance of this Contract, less amounts previously paid.
- b. The System shall also reimburse the Contractor for all costs to which the Contractor has been subjected or is legally liable for by reason of the termination of this Contract, including reasonable costs related to cancellation of orders, termination of subcontracts, etc.
- c. The System shall also reimburse the Contractor for the reasonable cost of providing protection of the property of the System as directed by the notice of termination.
- d. The Contractor shall not be reimbursed for any loss of anticipated profits associated with the unfinished portion of the Contract.

- e. The sum total of the payments made under Article 12.1.3 shall not exceed the total Contract Sum, less payments previously made.
- f. Title to all property accruing to the System by reason of the termination of this Contract shall immediately vest in the System, and the Contractor shall execute and deliver to the System all papers necessary to transfer title.
- g. The System or its representative shall be afforded full access to all books, correspondence, data, and papers of the Contractor relating to this Contract in order to determine the amount due.
- h. Disputes as to the sum payable to the Contractor shall be settled in accordance with Article 13.

12.2 TERMINATION FOR DEFAULT OF THE CONTRACTOR

- 12.2.1 If the Contractor persistently or repeatedly refuses or fails to supply enough properly-skilled workmen or proper materials, or persistently disregards laws, ordinances, rules, regulations, or orders of the System or of any public authority having jurisdiction, or fails to proceed as directed by the System, or performs the Work unsuitably, or neglects or refuses to remove materials or replace rejected Work, or fails to make satisfactory progress toward timely completion of the Work, or discontinues the prosecution of the Work without approval of the System, or otherwise is guilty of a substantial violation of a provision of the Contract, then the System may, without prejudice to any of its other rights or remedies, give the Contractor and its Surety written notice that the Contractor has seven (7) days from the date of the System's notice to cure the default set forth in the notice.
- 12.2.2 The discretion to declare the Contractor in default is solely the System's, and no party, whether bound by agreement to the System or attempting to raise a third party relationship, which this Contract specifically precludes, has standing to raise the failure of the System to exercise its discretion, if default is the basis of a claim against the System.
- 12.2.3 Should the Contractor fail to cure said default within the specified time, the System may terminate the Contract between the System and the Contractor and may take possession of the site and of all completed Work and any materials for which the System has already paid, and may finish the Work by whatever method it may deem expedient.
- 12.2.4 The Contractor is not entitled to receive any further payment until the Work is finished. In any case the Contractor shall be entitled to payment for Work satisfactorily completed by the date of termination, and for any materials already on site and for which the System has taken possession. However, if the unpaid balance of the Contract sum is less than the cost of finishing the Work, including compensation for the Professional's additional services, reasonable and necessary costs of reprourement, and any other damages which the System has incurred in accordance with the Contract, the Contractor or the Surety or both shall be liable to the System for the difference. Disputes as to the sum payable or due shall be settled in accordance with procedures in Article 13.
- 12.2.5 In the event the System wrongfully terminates the Contract, as determined by procedures in Article 13, such termination shall be considered a Termination for Convenience.

ARTICLE 13 - DISPUTES

13.1 DISPUTES BETWEEN THE CONTRACTOR AND THE SYSTEM

- 13.1.1 This Article applies to any dispute, disagreement, question, or other matter between the Contractor and the System arising under or by virtue of this Contract. Such matters shall be initiated as a written claim, meaning a written demand or assertion seeking, as a matter of right,

interpretation of the Contract terms, conditions, or requirements, or adjustment of the Contract Sum and/or Contract Time, or other relief with respect to the Contract.

- 13.1.2 Claims shall be processed as called for in this Article, until resolved or waived.
- 13.1.3 The Contractor shall diligently carry on the Work and maintain the progress schedule during the Disputes process, including Board of Claims proceedings, if any, unless otherwise agreed to in writing by the Contractor and the System.
- 13.1.4 At any step in the System's process, the Contractor's failure to submit a timely written request for the next step shall constitute the Contractor's waiver of the claim.
- 13.1.5 The Disputes processes in this Article, and claims introduced under them, shall survive Contract termination.

13.2 PROCEDURES

13.2.1 Step 1, Project Manager's Determination

Contractor's Written Request. The Contractor shall submit, in writing to the University Project Manager, a request for a determination on a claim. The request must be submitted not later than 21 days after occurrence of the event giving rise to the claim, or not later than 21 days after the Contractor first recognizes the condition giving rise to the claim, whichever is later.

Project Manager's Written Determination. The University Project Manager will render the University's Initial Written Determination within 14 days. If this Determination is not acceptable to the Contractor, the Contractor may proceed with Step 2. If the University Project Manager fails to issue an Initial Written Determination within 14 days, the request for a determination on the claim shall be deemed denied and the Contractor may proceed with Step 2.

13.2.2 Step 2, Contracting Officer's Pre-Claim Conference and University's Final Written Determination

Contractor's Written Request. The Contractor shall submit, in writing to the University Contracting Officer, a request for a University's Final Written Determination on the claim. The request must be submitted not later than 7 days after receipt of the University's Initial Written Determination, or deemed denial of the Initial Written Determination, whichever is later.

Pre-Claim Conference. The University Contracting Officer will hold a Pre-Claim Conference with the Contractor to discuss the claim within 21 days of receipt of the request for the University's Final Written Determination. If the University Contracting Officer fails to hold a Pre-Claim Conference within the time frame set forth in this Article, the request shall be deemed denied and the Contractor may proceed with Step 3.

University Final Written Determination. The University Contracting Officer will render the University's Final Written Determination within 14 days after the Pre-Claim Conference. If this Determination is not acceptable to the Contractor, the Contractor may proceed with Step 3. If the University Contracting Officer fails to issue a Final Written Determination within 14 days of the Pre-Claim Conference, the request shall be deemed denied and the Contractor may proceed with Step 3.

13.2.3 Step 3, Agency Claim Review and Hearing and Agency Final Decision

Contractor's Written Request. The Contractor shall submit, in writing to the System's Office of the Chancellor, Director of Construction Management, a request for an Agency Claim Review by the Office of the Chancellor. The request must be submitted not later than 7 days after receipt of the University's Final Written Determination, or deemed denial of the request for the University's Final Written Determination, whichever is later.

Agency Claim Review and Hearing. An Agency Claim Review Panel will conduct a review of the claim. The Panel will review the information and arguments and determine if a Hearing is warranted. If conducted, the Hearing will be administered by the Panel and will allow both parties to present their respective cases.

Mediation Option. At any time throughout the Step 3 process, the Agency Claim Review Panel may recommend to the Contractor and the University that the claim be submitted to mediation under the Commonwealth of Pennsylvania, Office of General Counsel, Disputes Resolution Program. Mediation must be mutually agreed upon by the parties.

Agency Final Decision. If the claim is not resolved by mutual agreement of the parties, the Office of the Chancellor will, within 120 days after receipt of the Contractor's request for an Agency Claim Review, issue a written Agency Final Decision formulated by the Agency Claim Review Panel. The Decision will state the basis for the decision and inform the Contractor of the right to administrative and judicial review. A copy of the Agency's Final Decision will be delivered to the Contractor by certified, return-receipt-requested mail. The Agency's Final Decision issued by the Office of the Chancellor represents the final order of the Purchasing Agency. If the Agency's Final Decision is not issued within 120 days after the request for the Agency Claim Review was submitted, then the Claim shall be deemed denied. The 120-day period may be extended with the written consent of both the Office of the Chancellor and the Contractor.

Contractor's Appeal. The Contractor shall have all appeal rights as set forth in the Commonwealth Procurement Code (62 Pa.C.S.A. § 101, et seq.).

13.3 ADMINISTRATIVE AND JUDICIAL REVIEW RIGHTS

- 13.3.1 Board of Claims. The Board of Claims has the exclusive jurisdiction for claims under this Contract, as provided in the Commonwealth Procurement Code (62 Pa.C.S.A. § 101, et seq.).
- 13.3.2 Commonwealth Court. If either the Contractor or the System is aggrieved by the decision of the Board of Claims, they may appeal to the Commonwealth Court under the Commonwealth Judicial Code (42 P.S. § 763(a)(1)) (relating to direct appeals from government agencies) within 30 days after certification of the Board's decision.

13.4 DISPUTES BY THE SYSTEM AGAINST THE CONTRACTOR

The System reserves its right to assert a claim against the Contractor in a court of proper jurisdiction.

13.5 DISPUTES BETWEEN CONTRACTORS

- 13.5.1 The System shall have no obligation to any third parties for any claim, nor be a party to any claims, disputes, or actions between Separate Prime Contractors, or between Separate Prime Contractors and subcontractors; nor shall such claims, disputes, or actions be subject to Board of Claims proceedings.
- 13.5.2 Should the Contractor, either directly or by the Contractor's subcontractors, or their respective agents, servants, or employees, cause damage or injury to the property or Work of any other Separate Prime Contractor, or their subcontractors, or by failing to perform the Contractor's Work (including the Work of the Contractor's subcontractors) hereunder with due diligence, delay any other Separate Prime Contractor, who shall suffer additional expense or damage thereby, the parties involved in such dispute shall settle by agreement or arbitrate said dispute by referring same to the American Arbitration Association. Said dispute shall be determined pursuant to the construction industry arbitration rules of the American Arbitration Association then in effect. Notice of the demand for arbitration shall be filed in writing with the other Separate Prime Contractors and with either the Northeast Regional Office of the American

Arbitration Association or another arbitrator mutually agreed upon by the relevant Separate Prime Contractors, and a copy shall be filed with the System. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. The System shall not be a party to the claim, dispute or other matter in question, but may be a witness in any arbitration at the request of any party involved in the arbitration.

- 13.5.3 Disputes between Separate Prime Contractors shall not delay completion of the Work, which shall be continued by the parties, subject to the rights herein before provided. The intent of this clause is to benefit the other Separate Prime Contractors on the Project or related projects and to serve as an indication of the mutual intent of the System and the Contractor that this clause raise such other Separate Prime Contractors to the status of third party beneficiaries only as to the terms and conditions of this Article. These provisions are provided as a benefit to the Contractor and they specifically exclude claims against the System for delay or other damages.

ARTICLE 14 - MISCELLANEOUS PROVISIONS AND LEGAL MATTERS

14.1 INTEGRATION

This Contract contains all the terms and conditions agreed to by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Contract exist.

14.2 APPLICABLE LAW

This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions).

14.3 LEGISLATIVE AND POLICY UPDATES

It may be necessary from time to time to modify the provisions of this Contract to comply with legislative or policy changes, including updates to policies of the System. In such cases, the System will notify the Contractor of the necessary changes, and the changes will be incorporated into the Contract by Amendment.

14.4 ASSIGNMENT

This Contract shall be binding on the parties hereto, their heirs, executors, administrators, successors, and assigns, but it may not be assigned by the Contractor without the prior written consent of the System.

14.5 ASSIGNMENT OF ANTITRUST CLAIMS

The Contractor and the System recognize that in actual economic practice, overcharges by the Contractor's suppliers, resulting from the violations of State or Federal anti-trust laws are, in fact, borne by the System. As part of the consideration for the award of this Contract, and intending to be legally bound, the Contractor assigns to the Commonwealth all rights, title and interest in and to any claims the Contractor now has, or may hereafter acquire, under State or Federal anti-trust laws relating to the goods or services which are the subject of this Contract.

14.6 LIENS

- 14.6.1 In accordance with applicable Pennsylvania Mechanics' Lien Law of 1963, as amended, (49 P.S. § 1303), the parties hereto hereby specifically waive the right to file any mechanics or

other lien or claim for Work done or material furnished in or about the performance of this Contract, and it is hereby expressly agreed that no such claim or claims shall be filed by anyone and that the Contractor shall not file nor permit any subcontractor, material man, mechanics or other person under him to file, nor shall any such contractor, subcontractor, material man or other person file, any mechanics or other lien or claim for Work done or material furnished in or about the performance of this Contract against the System, the Commonwealth of Pennsylvania, and/or the ground upon which the structure or Work herein provided for is erected or done, or against any structure thereon erected or to be erected, or against any structure or property whatsoever covered by the Contract.

- 14.6.2. Any person, co-partnership, association, or corporation furnishing labor, material, equipment or renting equipment or rendering public utility services in connection with performance of this Contract shall have a right of action to recover the cost thereof from the Contractor and the Surety on the bond given to secure the payment for such labor, material, equipment or equipment rental and services rendered by public utility as though such person or corporation had been named as obligee in such bond; subject to the provisions of the Commonwealth Procurement Code, as amended.

14.7 NO THIRD PARTY RIGHTS

The Contractor shall indemnify and hold harmless the System and the Commonwealth of Pennsylvania against any costs incurred by the System or the Commonwealth of Pennsylvania (including without limitation amounts paid pursuant to judgments or settlements and as counsel fees) in consequence of any claim by a third party against the System or the Commonwealth of Pennsylvania, including without limitation any claim by an employee of the System, the Commonwealth of Pennsylvania, the Contractor, or a subcontractor, and any claim by a subcontractor or another contractor, whether filed before or after final payment, based on actual or alleged damage to or destruction of property or injury to persons allegedly caused by the Contractor, or any subcontractor, or by their respective employees, in connection with the Work. The System shall promptly notify the other party of the assertion of any claim against which the System or the Commonwealth is held harmless pursuant to this condition, shall give such other party the opportunity to defend any such claim, and shall not settle any such claim without the approval of the indemnifying party.

14.8 HOLD HARMLESS

- 14.8.1 The Contractor shall indemnify and hold harmless the System, and their agents and employees, from and against all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from the performance of the Work, including any and all design work performed by or for the Contractor, provided that any such claim, damage, loss or expense: (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, any one directly or indirectly employed by any of them, or any one for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.
- 14.8.2 In any and all claims against the System, or against any of their agents or employees, by any employee or the Contractor, any subcontractor, any one directly or indirectly employed by any of them, or any one for whose acts any of them may be liable, the indemnification obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any subcontractor under workmen's compensation acts, disability benefit acts, or other employee benefit acts.
- 14.8.3 The obligations of the Contractor under this Article shall not extend to the liability of the Construction Manager, the Professional, or any other representative of the System, or any of their agents or employees, arising out of: (1) the preparation or approval of maps, drawings,

opinions, reports, surveys, change orders, designs, or specifications, or (2) the giving of, or the failure to give, directions or instructions by the Construction Manager or the Professional, or their agents or employees, provided such giving, or failure to give, is the primary cause of the injury or damages.

14.9 TAX LIABILITY AND OFFSET

14.9.1 The Contractor, by execution of this Contract, certifies that it has no outstanding tax liability to the Commonwealth of Pennsylvania; authorizes the Department of Revenue to release information related to its tax liability to the System; and authorizes the Commonwealth to set off any State and local tax liabilities of the Contractor or any of its subsidiaries, as well as any other amount due to the Commonwealth from the Contractor, not being contested on appeal by the Contractor, against any payment due to the Contractor under an agreement with the Commonwealth.

14.9.2 The certification of no outstanding tax liability is a material representation of fact upon which reliance is placed by the System in entering the Contract. If it is later determined that the Contractor knowingly rendered an erroneous certification, the System may find the Contractor in default and terminate the Contract. Such erroneous certification may also be grounds for initiation of civil or criminal proceedings.

14.10 AUDIT OF RECORDS

The System may request to, at reasonable times and places, audit the books and records of the Contractor related to the Contract. The Contractor shall maintain books and records related to the Contract for a period of three (3) years from the date of final payment. The Contractor shall include a requirement in all agreements with subcontractors and suppliers that requires the subcontractor or supplier to maintain its records for the same length of time.

14.11 DEBARMENT OR SUSPENSION

The System shall recommend debarment or suspension action against the Contractor whenever there is substantial evidence that a cause for debarment or suspension under the provisions of the Commonwealth Procurement Code and the provisions of this Contract have occurred. The Contractor shall be notified of such action and given reasonable opportunity to be heard by the System. The System shall determine debarment or suspension actions appropriate for the offense in accordance with the provisions of the Commonwealth Procurement Code.

14.12 CONTRACTOR RESPONSIBILITY

14.12.1 The Contractor certifies that it is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government, and if the Contractor cannot so certify, then it agrees to submit along with the bid proposal a written explanation of why such certification cannot be made.

14.12.2 If the Contractor enters into any subcontracts or employs under this Contract any subcontractors/individuals who are currently suspended or debarred by the Commonwealth or the federal government or who become suspended or debarred by the Commonwealth or the federal government during the term of this Contract or any extensions or renewals thereof, the Commonwealth shall have the right to require the Contractor to terminate such subcontracts or employment.

14.12.3 The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of Inspector General for investigations of the Contractor's

compliance with the terms of this or any other agreement between the Contractor and the Commonwealth which results in the suspension or debarment of the Contractor. Such costs shall include, but not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

- 14.12.4 The Contractor may search the current list of suspended and debarred Commonwealth contractors by visiting the eMarketplace website at <http://www.emarketplace.state.pa.us> and clicking the Debarment List tab.

14.13 NONDISCRIMINATION/SEXUAL HARASSMENT

- 14.13.1 The Contractor agrees in the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- 14.13.2 Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate in violation of the PHRA and applicable federal laws against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
- 14.13.3 The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
- 14.13.4 The Contractor and each subcontractor shall not discriminate in violation of PHRA and applicable federal laws against any subcontractor or supplier who is qualified to perform the work to which the Contract relates.
- 14.13.5 The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws and regulations relating to nondiscrimination and sexual harassment.
- 14.13.6 The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the Commonwealth for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- 14.13.7 The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
- 14.13.8 The Contractor's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the

Commonwealth if, at any time during the term of the Contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.

- 14.13.9 The Commonwealth may cancel or terminate the Contract and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the System may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

14.14 CONTRACTOR INTEGRITY

- 14.14.1 It is essential that those who seek to contract with the Commonwealth of Pennsylvania ("Commonwealth") observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.

- 14.14.2 For purposes of these Contractor Integrity provisions, the following terms shall have the meanings found in this Section:

a. "Affiliate" means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.

b. "Consent" means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.

c. "Contractor" means the individual or entity that has entered into this contract with the Commonwealth.

d. "Contractor Related Parties" means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of five percent or more interest in the Contractor.

e. "Financial Interest" means either:

- (1) Ownership of more than a five percent interest in any business; or
- (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

f. "Gratuity" means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the [Governor's Code of Conduct, Executive Order 1980-18](#), the 4 Pa. Code §7.153(b), shall apply.

g. "Non-bid Basis" means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

- 14.14.3 In furtherance of this policy, the Contractor agrees to the following:

a. The Contractor shall maintain the highest standards of honesty and integrity during the performance of this Contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to the Contractor or that govern contracting or procurement with the Commonwealth.

b. The Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity provisions conspicuously in easily-

accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.

c. The Contractor, its affiliates, agents, and employees, and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive, or any other published standard of the Commonwealth in connection with performance of Work under this Contract, except as provided in this Contract.

d. The Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the Contract. The Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the Contract signed by Contractor.

e. The Contractor certifies to the best of its knowledge and belief that within the last five (5) years the Contractor or Contractor Related Parties have not:

(1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;

(2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;

(3) had any business license or professional license suspended or revoked;

(4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation, or anti-trust; and

(5) been, and is not currently, the subject of a criminal investigation by any federal, state, or local prosecuting or investigative agency, and/or civil anti-trust investigation by any federal, state, or local prosecuting or investigative agency.

If the Contractor cannot so certify to the above, then it must submit along with its bid, proposal, or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the Contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. The Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the Contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances, or were false or should have been known to be false when entering into the Contract.

f. The Contractor shall comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award. If this Contract was awarded on a Non-bid Basis, the Contractor must also comply with the requirements of Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a).

g. When the Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, the Contractor shall immediately

notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.

h. The Contractor, by submission of its bid or proposal and/or execution of this Contract, and by the submission of any bills, invoices, or requests for payment pursuant to the Contract, certifies and represents that it has not violated any of these Contractor Integrity provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the Contract, to include any extensions thereof. The Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity provisions. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

i. The Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity provisions. The Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. The Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to the Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or concern this Contract. The Contractor shall incorporate this paragraph in any agreement, contract, or subcontract it enters into in the course of the performance of this contract solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.

j. For violation of any of these Contractor Integrity provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this Contract, and debar and suspend the Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

14.15 COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee (excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business). For breach or violation of this warranty, the System shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract Price or consideration, or otherwise recover, the full amount of such commission, percentage, or contingent fee.

14.16 AMERICAN WITH DISABILITIES ACT

14.16.1 Pursuant to federal regulations promulgated under the authority of the Americans with Disabilities Act (28 C.F.R. 35.101 et seq.), no individual with a disability shall, on the basis of the disability, be excluded from participation in this Contract or from activities provided for under

this Contract. As a condition of accepting and executing this Contract, the Contractor agrees to comply with the General Prohibitions Against Discrimination (28 C.F.R. 35.130), and all other regulations promulgated under Title II of the Americans with Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the System through contracts with outside contractors.

- 14.16.2 The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania and the System, and their respective officers and employees, from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against any of the foregoing as a result of the Contractor's failure to comply with the provisions of Article 14.16.1.

14.17 RECYCLED MATERIALS

- 14.17.1 In accordance with Section 108, Recycled Materials, of the Commonwealth Procurement Code (62 Pa.C.S.A. § 108), all insulation products incorporated into the Project shall contain the following minimum percentages, by weight, of postconsumer recovered paper or recovered material:

Cellulose Loose-Fill and Spray-On 75 % Postconsumer Recovered Paper

Perlite Composite Board 23% Postconsumer Recovered Paper

Plastic Rigid Foam, Polyisocyanurate/Polyurethane materials:

Rigid Foam 9% Recovered Material

Foam In-Place 5% Recovered Material

Glass Rigid Foam 6% Recovered Material

Phenolic Rigid Foam 5% Recovered Material

Rock Wool 50% Recovered Material

"Postconsumer Recovered Paper" is defined as "any paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards and used cordage; as well as all paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste."

"Recovered Materials" is defined as "waste material and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process."

- 14.17.2 The Contractor may be required to provide to the System documentation of such content.

14.18 RECIPROCAL LIMITATIONS ACT

- 14.18.1 The Contractor shall comply with the requirements of the Reciprocal Limitations Act (62 Pa.C.S.A. § 107). The Act requires the System to not specify, use, or purchase supplies which are produced, manufactured, mined, grown, or performed in any state that prohibits the specification for, use of, or procurement of such supplies in or on its public buildings or other works when such supplies are not produced, manufactured, mined, or grown, or performed in that state.

- 14.18.2 The following is a list of the states which have been found by the Commonwealth of Pennsylvania to have prohibited the use of certain out-of-state supplies:

Georgia (forest products only)

New Jersey (various products, to include but not limited to: chain link fence, portable sanitation units, glass, glazier supplies, carpet and cushion, shades, upholstery materials and supplies, room air conditioning, electrical supplies, plumbing supplies, hardware supplies, fasteners, lumber, building supplies, audio/visual

equipment, fire extinguishers, fire hose, motor oils, fuel oil, Venetian blinds, and drapes)
New Mexico construction

The above preferences are those related to construction contracts only. The complete list of preferences for all contracts, supplies, and services is available from the Commonwealth of Pennsylvania Department of General Services.

14.19 TRADE PRACTICES ACT

14.19.1 The Contractor shall comply with the requirements of the Trade Practices Act (71 P.S. § 773.101, et seq.). The Act prohibits the System from specifying, purchasing, or permitting to be furnished or used, in any public works, aluminum or steel products made in a foreign country which has been determined as "discriminating" by the Commonwealth.

14.19.2 Aluminum or Steel Products means aluminum or steel products rolled, formed, shaped, drawn, extruded, forged cast, fabricated, or otherwise similarly processed, or processed by a combination of two or more of such operations, from aluminum or steel not made in the United States.

14.19.3 The countries of Brazil, South Korea, Spain, and Argentina have been found to discriminate against certain aluminum and steel products made in Pennsylvania. Therefore, the purchase or use of those countries' products, as listed below, is not permitted:

Brazil: Welded carbon steel pipes and tubes; carbon steel wire rod; tool steel; certain stainless steel bar; stainless steel wire rod and cold-form stainless steel bar; pre-stressed concrete steel wire strand; hot-rolled carbon steel plate in coil; hot-rolled carbon steel sheet, and cold-rolled carbon steel sheet.

Spain: Certain stainless steel products, including stainless steel wire rod, hot-rolled stainless steel bars and cold-formed stainless steel bars; pre-formed stainless steel bars; pre-stressed concrete steel wire strand; certain steel products including hot-rolled steel plate, cold-rolled carbon steel plate, carbon steel structural shapes, galvanized carbon steel sheet, hot-rolled carbon steel bars, and cold-formed carbon steel sheet.

South Korea: Welded carbon steel pipes and tubes hot-rolled carbon steel place; hot-rolled carbon steel sheet and galvanized steel sheet.

Argentina: Carbon steel wire rod and cold-rolled carbon steel sheet.

14.20 STEEL PRODUCTS PROCUREMENT ACT

14.20.1 The Contractor shall comply with the requirements of the Steel Products Procurement Act (73 P.S. 1881, et seq.). The Steel Products Procurement Act requires that any steel products being used or supplied in the performance of the Contract must be "steel products" as defined in the Act.

14.20.2 Steel Products are considered to be products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed, or processed by a combination of two or more of such operations, from steel made in the United States by the open hearth, basic oxygen, electric furnace, Bessemer, or other steel making process.

a. Includes cast iron products.

b. Includes machinery and equipment listed in United States Department of Commerce Standard Industrial Classification 25 (furniture and fixture), 35 (machinery; except electrical), and 37 (transportation equipment) and made of, fabricated from, or containing steel components.

c. Does not include steel products which will not be incorporated into the Project (i.e., tools – hammers/wrenches); scaffolding used to construct the Project and removed after completion; and trailers used as offices by contractors and removed after completion of the Project.

d. Transportation equipment shall be determined to be a United States steel product only if it complies with Section 165 of Public Law §§ 97-424 (96 Stat. 2136).

e. System vs. Product. Each "product" in the system is identified as a separate and distinct steel product.

When the System's design specifies trade names, catalog numbers, and manufacturers for materials and equipment, they are provided for the purpose of establishing a standard of quality, performance, and appearance, and for establishing a standard of competitive bidding. The use of such descriptive information will not relieve the Contractor with compliance with all respects of the Act.

14.20.3 Origin of Steel.

a. If the product contains 100 percent United States manufactured steel, it is a "steel product" under the Act, no matter where the non-steel components of the product are manufactured.

b. If the product contains 100 percent steel manufactured in a foreign country, its acquisition is prohibited.

c. If the product contains both foreign and United States manufactured steel (no matter how little or how much of each), the product shall be determined to be a United States steel product if at least 75 percent of the total cost of the articles, materials, and supplies have been mined, produced, or manufactured in the United States.

14.20.4 If 100 percent of the steel product is identifiable (i.e., stamped United States Steel), then the Contractor shall submit certification documentation. If the steel product is unidentified, the Contractor shall provide documentation including, but not limited to: invoices, bills of lading, and mill certification. The System is authorized to withholding payments until the documentation or certification has been provided. If payments have been made but should not have been made because of noncompliance, the System or the Commonwealth Attorney General may recover the payments directly from the Contractor, subcontractor, or manufacturer who did not comply. Additionally, any person who willfully violates the Act shall be prohibited from submitting bids or performing work for the Commonwealth for five years.

14.20.5 The Steel Products Procurement Act requirement may be waived by the System when the System determines that steel products are not produced in the United States in sufficient quantities to meet the requirements of the Contract and/or when the product appears on the Department of General Services' annual Final List of Exempt Machinery and Equipment Steel Products.

14.21 ENVIRONMENTAL QUALITY CONTROL

14.21.1 All Prime Contractors and their subcontractors shall perform the Work in a manner that shall minimize the possibility of air, water, land, and noise pollution.

14.21.2 Each Prime Contractor shall comply with all statutes and regulations, as amended, concerning environmental quality control administered by the Department of Environmental Protection, including but not limited to Clean Streams Law, Pennsylvania Sewage Facilities Act, Air Pollution Control Act, Surface Mining Conservation and Reclamation Act, Bituminous Coal Open Pit Mining Conservation Act, Dams and Encroachments Act, Water Well Driller's Act, Water Works Act, and the Atomic Energy Act. The Contractor shall be solely responsible for securing all required permits and for any violations.

14.21.3 Storage, collection, transportation, processing, and final disposal of solid waste shall be in accordance with regulations and standards of the Commonwealth Department of Environmental Protection (DEP). Immediately upon notice of award of the Contract the

Contractor shall apply for the necessary permits from DEP. A copy of this permit must be submitted to the System before commencing waste disposal.

14.22 PA E-VERIFY

- 14.22.1 The Commonwealth of Pennsylvania enacted Act 127 of 2012, known as the Public Works Employment Verification Act ('the Act'), which requires all public work contractors and subcontractors to utilize the Federal Government's E-Verify system (EVP) to ensure that all employees performing work on public work projects are authorized to work in the United States. The Department of General Services' (DGS) Public Works Employment Verification Compliance Program is responsible for the administration, education, and enforcement of the Act. Information on the Act and DGS' program are available on DGS' web site.
- 14.22.2 This Contract falls under the Act and the associated DGS program. Contractors shall comply with all requirements of the Act, and also require each of their subcontractors to comply.
- 14.22.3 Subcontracts between a public works contractor and its subcontractors shall contain notification of the applicability of the Act, information regarding the use of the EVP, and reference to DGS' website to obtain a copy of the required Commonwealth of Pennsylvania Public Works Employment Verification Form (the Form). Additionally, Contractors shall require each of their subcontractors to sign and submit to the System, prior to that subcontractor performing work at the project site, the Form. The Form is available on DGS' web site and/or through the university.

14.23 RIGHT TO KNOW LAW

- 14.23.1 Unless otherwise determined by a Pennsylvania appellate court subsequent to the execution of this Contract, the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104 ("RTKL"), applies to this Contract.
- 14.23.2 Unless the Contractor provides the System, in writing, with the name and contact information of another person, the System shall notify the Contractor if the System needs the Contractor's assistance in connection with a request made under the RTKL. The Contractor shall notify the System in writing of any change in the name or the contact information within a reasonable time prior to the change.
- 14.23.3 Upon notification to the Contractor that the System has received a request for the Contractor's records under the RTKL (the "Requested Information"), the Contractor agrees to assist the System in responding to the request. Such assistance shall include providing the System, within three (3) days, with copies of any Requested Information in the Contractor's possession that the Contractor deems a Public Record, as that term is defined in the RTKL, or otherwise notify the System that the Requested Information is not a Public Record. If the Contractor is unable to provide the Requested Information within three (3) days for one of the reasons specified in the RTKL, the Contractor agrees to timely notify the System that it will need up to an additional twenty-five (25) days, and must provide in writing the reason the additional time is needed. If the Contractor makes a determination the Requested Information is within the scope of the RTKL but fails to provide the Requested Information to the System within the period specified in this provision, the failure shall be considered an event of default and the Contractor shall pay, indemnify, and hold the System harmless for any damages, penalties, detriment, or harm that the System may incur as a result of the Contractor's failure.
- 14.23.4 The Contractor's determination as to whether the Requested Information is a Public Record is dispositive of the question as between the parties. The Contractor agrees to provide information and/or to appear before the Office of Open Records or Pennsylvania Courts in support of the System's denial of access to a record the Contractor determined was not a Public Record. The Contractor agrees to indemnify the System for any court costs, attorneys' fees, or civil penalties awarded against the System under the RTKL in connection with the Contractor's

denial of access to Requested Information.

- 14.23.5 If in the course of this Contract, the System is provided with information the Contractor clearly identifies as a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, the System agrees to abide by the terms of Section 707 of the RTKL and timely provide the Contractor with notice of a request for this information and allow the Contractor the ability to respond, as provided by the RTKL. The Contractor reserves all rights and remedies as allowed by law relating to the System's unauthorized disclosure of the Contractor's Trade Secret or Confidential Proprietary Information. This provision shall not be construed to limit the sovereign immunity of the System.
- 14.23.6 The System will reimburse the Contractor for any costs associated with complying with this provision only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- 14.23.7 The Contractor agrees to abide by any decision to release a record to the public made by the Office of Open Records after timely appeal to the Pennsylvania Courts.

14.24 ALTERNATIVE ENERGY PORTFOLIO STANDARDS ACT (PA ACT No. 2004-213)

The System shall retain the rights to any and all possible Demand-Side Management Alternative Energy Credits, and any and all possible Distributed Generation System Alternative Energy Credits, as provided for under Pennsylvania's Alternative Energy Portfolio Standards Act, or under any other similar Pennsylvania or United States laws, statutes, regulations, or policies, which may be realized as a result of the Work under this Contract.

14.25 TAX CREDITS OR TAX DEDUCTIONS FOR ENERGY EFFICIENCY PROJECTS

The Contractor shall not apply for, without prior written approval of the System, any tax credits or deductions for energy efficient building property installed as part of this Contract, as the person primarily responsible for designing or installing the property, in lieu of the System, as allowed by the United States Energy Policy Act of 2005, by Section 179D of the United States Internal Revenue Service (IRS) code, or by any other similar laws, statutes, regulations, or provisions. Under such System approval, the value of the resultant tax savings shall be shared by the Contractor with the System, at a percent agreed upon when the System's approval is provided. The System's share of the savings shall be credited to the System under this Contract, or alternately shall be paid to the System as a separate payment. This Article is subject to regulations promulgated by the United States Department of Energy and the IRS.

14.26 NON-APPROPRIATION OF FUNDS

The System's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (System, State and/or Federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the System shall have the right to terminate the Contract and/or any work order or purchase order issued under it. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose.