PENNSYLVANIA STATE SYSTEM OF HIGHER EDUCATION

COMMONWEALTH OF PENNSYLVANIA

S T A N D A R D F O R M O F A G R E E M E N T

F O R

S E P A R A T E P R I M E F A C I L I T I E S P R O J E C T S

R I D E R B

GENERAL CONDITIONS

ARTICLE 1

DEFINITIONS

1.1 As used in these General Conditions, and in the Agreement, the following terms are defined herein, unless the context clearly dictates otherwise.

a. Agreement means the Agreement or Contract for construction services of which these general conditions are made a part. The term "Agreement" shall be interchangeable with the term "Contract" throughout this document.

b. 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 Agreement and/or Rider B, and/or any other Contract documents providing terms and conditions. The Contract terms and conditions may be changed only by Amendment.

c. 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.

d. Contract Sum, or Contract Price, is the dollar amount stated in the 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.

e. Contract Time is the period of time stated in the Contract, including any changes authorized by fully-executed Change Orders, and is the time allowed for substantial completion of the work.

f. Contractor shall be the entity with whom the System has entered into this agreement to construct the Project in accordance with the Contract Documents.

g. Separate Prime Contractors are the entities with whom the System enters into agreements to provide the services, means, and methods 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 agreement 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. Substantial Completion is when the work is sufficiently completed in accordance with the Contract Documents, as modified by 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 a project be certified as Substantially Complete until at least ninety percent (90%) of the work on the Project is complete.

k. System means the University, Universities, the System, or the Office of the Chancellor of the Pennsylvania State System of Higher Education entering into the Contract, or any authorized representative of any of them.

l. Work includes all services and labor necessary to produce the construction required by the Contract Documents. It also includes all material and equipment incorporated or to be incorporated into such construction.

ARTICLE 2

GENERAL PROVISIONS

2.1 CONTRACT DOCUMENTS

2.1.100 The Contract Documents consist of the Agreement, all Riders, and the contract bonds (if specified). The drawings and technical specifications, any Addenda, and any properly executed Amendments and Change Orders are included by reference. Other documents may be specifically incorporated by inclusion or by reference.

2.1.101 The Contract can be changed by either: (1) an Amendment that changes the terms and conditions, or (2) a Change Order that changes the work and/or the Contract Sum and/or Time. 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.

2.1.102 The work specified in the contract includes all labor, equipment, and materials required and incorporated to complete the work specified in and according to all the Contract Documents.

2.1.103 The Contract Documents are complementary, and what is required by any one of the Contract Documents shall be binding as if required by all. The intention of the documents is to include all labor, materials, equipment, and other items necessary for the proper execution and completion of the work. 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 structure.

2.1.104 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.

2.2 INTEGRATION

This Agreement 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 Agreement exist.

2.3 JURISDICTION

Any legal action arising from the terms and conditions of this contract shall be litigated pursuant to the laws of the Commonwealth of Pennsylvania.

2.4 ASSIGNMENT

This agreement 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.

2.5 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.

2.6 LIENS

2.6.100 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 Agreement, 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 Agreement.

2.6.101 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.

2.7 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.

2.8 HOLD HARMLESS

2.8.100 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.

2.8.101 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.

2.8.102 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.

2.9 TAX LIABILITY AND OFFSET PROVISIONS

2.9.100 The Contractor, by execution of this agreement, 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.

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

2.10 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.

2.11 CONTRACTOR RESPONSIBILITY PROVISIONS

2.11.100 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.

2.11.101 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.

2.11.102 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.

2.11.103 The contractor may obtain the current list of suspended and debarred contractors by contacting the Department of General Services, Office of General Counsel, North Office Building Room 603, Harrisburg, Pennsylvania 17125, Phone: 717-783-6472, fax: 717-787-9138.

2.12 NONDISCRIMINATION/SEXUAL HARASSMENT

2.12.100 In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Agreement or any subcontract, the Contractor, subcontractor, or any person acting or behalf of the Contractor or subcontractor shall not by reason of gender, race, religious creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

2.12.101 Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the Agreement on account of gender, race, religious creed, or color.

2.12.102 The Contractor and subcontractors shall establish and maintain a written sexual harassment policy and shall inform its employees of the policy.

2.12.103 The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the Contracting Officer and the Department of General Services' Bureau of Minority and Women Business Opportunities for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the Contracting Officer or the Bureau of Minority and Women Business Opportunities.

2.12.104 The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment clause in every subcontract so that such provisions will be binding upon each subcontractor.

2.12.105 The System may cancel or terminate the Agreement, and all money due or to become due under the Agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment clause.

2.13 CONTRACT COMPLIANCE REQUIREMENTS

2.13.100 The Contractor shall comply with the provisions of 16 Pennsylvania Code Chapter 49 and all statutes and regulations regarding equal opportunity employment.

2.13.101 The Contractor shall take the following steps to assure equal opportunity in employment:

a. Require that all advertisements for personnel contain the notation "An Equal Opportunity Employer," and that all advertisements be inserted in newspapers having a large general circulation, or other media reaching a large portion of the population in the area and among minority groups.

b. Use direct and systematic recruitment of personnel through the applicable public (PA Job Service) and private employee referral sources likely to yield qualified minority group applicants, including but not limited to schools, colleges, and minority group organizations.

c. Encourage minority group applicants through referral by current employees.

2.13.102 The Contractor, in order to assure nondiscriminatory hiring, shall take the following steps:

a. All members of Contractor's staff authorized to hire and discharge, or to recommend such actions, shall be fully cognizant of the Contractor's Equal Employment Policy commitments as required by the Nondiscrimination/Sexual Harassment clause of this contract.

b. Cooperation shall be actively sought with unions, where applicable, to develop programs to assure qualified minority group persons of equal opportunity for employment and training.

2.13.103 The Contractor shall make use of apprenticeship and/or other training programs by:

a. Assisting minority group members to enter pre-apprenticeship training programs.

b. Actively assisting minority group employees to increase skills to be eligible for upgrading.

c. Actively participating in programs for fair and equal consideration of all applicants, such programs having been approved by the Bureau of Apprenticeship and Training of the U.S. Department of Labor, and/or the Pennsylvania Apprenticeship and Training Council, where applicable.

2.13.104 When bids are being solicited, the Contractor shall actively solicit bids from minority subcontractors and suppliers.

2.13.105 The Contractor shall make efforts to obtain qualified minority group representation in all classes of employment on the job and in phases of work.

2.13.106 The Contractor shall submit reports (Form STD-21, Initial Contract Compliance Data, and Form STD-28, Monthly Contract Compliance Report) as required and as applicable throughout the duration of the Contract.

2.14 CONTRACTOR INTEGRITY

2.14.100 Definitions

a. *Confidential Information* means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the System.

b. *Consent* means written permission signed by a duly authorized officer or employee of the System, provided that where the material facts have been disclosed, in writing, by pre-qualification, bid, proposal, or contractual terms, the System shall be deemed to have consented by virtue of execution of this agreement.

c. *Contractor* means the individual or entity that has entered into this agreement with the System, including directors, officers, partners, managers, key employees, and owners of more than a 5% interest.

d. *Financial Interest* means:

(i) ownership of more than a 5% interest in any business; or

(ii) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

e. *Gratuity* means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

2.14.101 The Contractor shall maintain the highest standards of integrity in the performance of this agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the System.

2.14.102 The Contractor shall not disclose to others any Confidential Information gained by virtue of this agreement.

2.14.103 The Contractor shall not, in connection with this or any other agreement with the System, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendations, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the System.

2.14.104 The Contractor shall not, in connection with this or any other agreement with the System directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the System.

2.14.105 Except with the consent of the System, neither the Contractor nor anyone in privity with him shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this agreement except as provided therein.

2.14.106 Except with the consent of the System, the Contractor shall not have a financial interest in any other Contractor, subcontractor, or supplier providing services, labor, or material on this project.

2.14.107 The Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the System in writing.

2.14.108 The Contractor, by execution of this agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he has not violated any of these provisions.

2.14.109 The Contractor shall, upon request of the Office of the Chancellor of the System, reasonably and promptly make available to that office and its representatives, for inspection and copying, all business and financial records of the Contractor of, concerning, and referring to this agreement with the System or which are otherwise relevant to the enforcement of these provisions.

2.14.110 For violation of any of the above provisions, the System may terminate this and any other agreement with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another Contractor to complete performance hereunder, and debar and suspend the Contractor from doing business with the System. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the System may have under law, statute, regulation, or otherwise.

2.15 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.

2.16 AMERICAN WITH DISABILITIES ACT

2.16.100 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.

2.16.101 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 2.13.100.

2.17 RECYCLED MATERIALS

2.17.100 In accordance with Section 108, Recycled Materials, of the Commonwealth Procurement Code (P.S. 62), 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 Spray-On 5 % Postconsumer Recovered Paper

Perlite Composite Board 23% Postconsumer Recovered Paper

Plastic Rigid Foam, Polyisocyanurate/Polyurethane:

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 sold 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."

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

2.18 RECIPROCAL LIMITATIONS ACT

2.18.100 The Contractor shall comply with the requirements of the Reciprocal Limitations Act (62 P.S. 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.

2.18.101 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.

2.19 TRADE PRACTICES ACT

2.19.100 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.

2.19.101 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.

2.19.102 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.

2.20 STEEL PRODUCTS PROCUREMENT ACT

2.20.100 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.

2.20.101 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.

2.20.102 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.

2.20.103 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.

2.20.104 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.

2.21 ENVIRONMENTAL QUALITY CONTROL

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

2.21.101 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 Atomic Energy Act

2.21.102 The Contractor shall be solely responsible for securing all required permits and for any violations.

2.21.103 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.

ARTICLE 3

THE SYSTEM'S RIGHTS AND RESPONSIBILITIES

3.1 THE SYSTEM REPRESENTATIVES

3.1.100 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.

3.1.101 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.

3.2 THE PROFESSIONAL

3.2.100 If retained and so designated by the System, a Professional architect or engineer may act as an agent for the System in the administration of the contract and may perform any or all of the functions stated herein, as determined by his agreement with the System.

3.2.101 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.

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

3.3 THE CONSTRUCTION MANAGER

3.3.100 If retained and so designated by the System, a Construction Manager may act as an agent for the System in the administration of the contract and may perform any or all of the functions stated herein, as determined by his agreement with the System.

3.3.101 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.

3.3.102 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.

3.3.102 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 prime 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. In doing so, 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.

3.4 OTHER SYSTEM REPRESENTATIVES

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 agents for the System in the administration of specific aspects of the contract. They may perform functions as determined by their agreements with the System.

3.5 CONSISTENCY OF DIRECTION

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.

3.6 THE SYSTEM'S RIGHT TO CARRY OUT THE WORK

If the Contractor fails to carry out the work in accordance with the Contract Documents or fails to perform any provision of the agreement, 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.

3.7 RIGHT TO AWARD CONTRACTS

The System reserves the right to award other contracts in connection with other portions of the project under these similar conditions of this agreement.

ARTICLE 4

THE CONTRACTOR'S RIGHTS AND RESPONSIBILITIES

4.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS

4.1.100 The Contractor shall perform the work according to good quality industry standards, practices, and procedures, and in accordance with the Contract Documents and submittals approved.

4.1.101 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.

4.1.102 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.

4.2 SUPERVISION AND CONSTRUCTION PROCEDURES

4.2.100 The Contractor shall supervise and direct the work using the Contractor's best skill and attention. 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.

4.2.101 The Contractor shall provide all labor, materials, and equipment necessary for the proper prosecution of the work in an acceptable manner and at a satisfactory rate of progress.

4.2.102 The Contractor shall be responsible for the acts and omissions of all its employees, all subcontractors and their agents and employees, and all other persons performing portions of the work under a contract with the Contractor.

4.3 SUPERINTENDENT

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the worksite a competent superintendent who is satisfactory to the System and has authority to act for the Contractor. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The superintendent is responsible for continuous field supervision, coordination, and completion of the work, and for the prevention of accidents. The superintendent shall attend all job conferences scheduled by the System.

4.4 LABOR AND MATERIALS

4.4.100 The Contractor shall enforce strict discipline and good order and conduct among his employees and other persons carrying out the work. Every employee shall be fit and skilled in the performance of tasks assigned to them.

4.4.101 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.), which is incorporated herein by reference as if fully set forth herein. The Contractor should refer to Rider A, Special Conditions, of the Contract to determine if Prevailing Wages are applicable to this project. All provisions and regulations of the Federal and State Wages Acts shall be adhered to in the performance of this work.

4.4.102 The System anticipates the Contractor will provide products (i.e., products, materials, and equipment as defined in Specification Section 01600, Materials and Equipment) to be incorporated into the work of the project that are new, undamaged, and unused at the time of the installation, unless otherwise indicated in the Contract Documents. The Contractor shall produce, upon request, evidence supporting the source of materials used in the work.

4.4.103 Products provided under the contract shall meet or exceed the quality specified in the Contract Documents. 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.

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

4.6.100 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.

4.6.101 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 scope of 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.

4.6.102 Unless otherwise called for by the Contract, the System will obtain any required zoning or land use permits from the local municipality having jurisdiction.

4.6.103 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.

4.6.104 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.

4.6.105 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.

4.6.106 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

4.7.100 The Contractor shall comply with the project schedule requirements specified in Specification Section 01315, Project Schedule. If a Section 01315 is not provided, the Contractor shall comply with the provisions below.

4.7.101 Within seven (7) days following receipt of Notice to Proceed, the Contractor for General Construction shall furnish to the System and to any and all other Separate Prime Contractors a practicable schedule of the proposed prosecution of the work under his contract, 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.

4.7.102 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 his contract and/or declare the Contractor in default.

4.8 SUBMITTALS

4.8.100 The Contractor shall prepare and process submittals in accordance with Specification Section 01300, 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 completion date, without agreement by the System.

4.8.101 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.

4.8.102 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

4.9.100 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 his operations.

4.9.101 The site of the work is defined by the Limit of Contract line shown on the drawings. The Contractor may only extend his 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.

4.9.102 The Contractor shall cooperate in the arrangements of his work as necessary to least affect the administration or operation of any present facility, and shall protect his materials. 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.

4.9.103 The Contractor shall at all times afford other contractors reasonable access to the site and material storage areas, and shall perform his work so as not to interfere with the work of other contractors.

4.9.104 The Contractor shall be responsible for providing temporary heat, light, and water as necessary to execute and protect his work, shall maintain adequate ventilation of the work site to ensure proper air quality for human breathing, material protection, and safety equipment operations, and as further provided in the Contract Documents.

4.9.105 The Contractor shall be responsible to obtain all approvals and certificates of occupancies from local and state authorities having jurisdiction over the project, and to submit the completed documents to the System.

ARTICLE 5

SUBCONTRACTORS

5.1 SUBCONTRACTS

5.1.100 Subcontractors employed by the Contractor are solely responsible to the Contractor, and shall have no contractual relationship with the System.

5.1.101 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 Agreement with respect to the work to be performed under the subcontract, so that the subcontracting thereof will not prejudice such rights.

b. Requiring that 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 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.

5.1.102 The Contractor shall not sublet any part of this contract without written approval of the System. Within 30 days of a Notice to Proceed, the Contractor shall submit a list of all subcontractors he proposes to use for written approval by the System. In all cases, this shall be prior to the first application for payment being submitted.

5.1.103 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.

5.2 SYSTEM RIGHTS

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 his 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 RIGHT TO ORDER CHANGES

6.1.100 The System, without invalidating the agreement, and without notice to the Sureties, may, by written order, order changes in the work within the general scope of the agreement, consisting of additions, deletions, or other revisions. All such changes shall be implemented by a Change Order.

6.1.101 Change Orders shall adjust the contract sum and 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.

6.1.102 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.

6.1.103 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 time. In such cases, requests for adjustment to the contract sum and/or time must be accompanied by supporting documentation of incurred costs/time.

6.1.104 Minor changes in the work not affecting the contract sum or extension of 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

6.2.100 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 01035, Change Order Procedures, or other similar formal System procedures.

6.2.101 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

6.3.100 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.

6.3.101 The System will promptly investigate such conditions and, if they 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, 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 time, however, for concealed conditions encountered during cutting and patching of work.

ARTICLE 7

TIME

7.1 CONTRACT TIME

7.1.100 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 Rider A, Special Conditions.

7.1.101 No on-site work may take place until Notice to Proceed.

7.1.102 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.

7.1.103 The contract time anticipates inclement and/or adverse weather, and the Contract 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 protecting as may be necessary to continue to work throughout the period of inclement or adverse weather.

7.2 ADJUSTMENTS TO THE CONTRACT TIME

7.2.100 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.

7.2.101 A time extension for an ordered change in the work will depend upon the extent, if any, by which the change causes delay in the 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. However, a change order granting a time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be changed.

7.3 NO-FAULT TIME EXTENSIONS

7.3.100 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, acts of another contractor in its performance of a contract with the System, strikes, embargoes, and unusually severe weather. Any such time extension must meet the criteria under Article 7.2.101.

7.3.101 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 WORK

8.1.100 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.

8.1.101 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.

8.1.102 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.

8.1.103 The provisions of this Article 8.1 do not apply under conditions enumerated in Article 8.2, Suspension of Work Due to Unfavorable Conditions, or Article 8.3, Suspension of Work for Fault of the Contractor.

8.2 SUSPENSION OF WORK DUE TO UNFAVORABLE CONDITIONS

8.2.100 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.

8.2.101 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.

8.2.102 Any work done by the Contractor during the period of suspension is his 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.

8.2.103 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 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 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

a. by an act of another Separate Prime Contractor, or

b. 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 14.5.

ARTICLE 9

PAYMENTS

9.1 PAYMENTS

9.1.100 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.

9.1.101 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 01027, Application for Payment, and as outlined elsewhere in the Contract Documents.

9.1.102 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 01027, Applications for Payment.

9.1.103 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.

9.1.104 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

9.2.100 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.

9.2.101 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.

9.2.102 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 GOOD FAITH CLAIMS

9.3.100 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.

9.3.101 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.

9.3.102 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

9.4.100 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 Commonwealth Code. There shall be no grace period.

9.4.101 For the purposes of this Article, the 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 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.

9.4.102 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, Retainage, 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 WORK

10.1 ACCEPTANCE OF WORK

10.1.100 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.

10.1.101 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

10.2.100 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.

10.2.101 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 his 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.

10.2.102 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

10.3.100 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.

10.3.101 The Contractor shall bear the cost of making good all work of other Separate Prime Contractors destroyed or damaged by such removal or correction.

10.3.102 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 3.6, 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.

10.3.103 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

10.4.100 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.

10.4.101 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

10.6.100 In addition to any other warranties in this contract, the Contractor shall warrant, except as provided in Article 10.6.105, 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.

10.6.101 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.

10.6.102 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.

10.6.103 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.

10.6.104 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.

10.6.105 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.

10.6.106 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

11.1.100 The Contractor shall be responsible for initiating, maintaining, and supervising all safety and health precautions and programs required under the Contract and relative to his 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 his 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.

11.1.101 The Contractor shall comply with Federal OSHA regulations and other applicable safety and health regulations. The most stringent standard shall prevail.

11.1.102 The Contractor shall designate a qualified member of his organization at the site who shall be responsible for the safety and health program.

11.1.103 The Contractor shall comply with Specification Section 01501, Safety and Health Requirements, 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 his 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 INSURANCE

The Contractor shall maintain, as a minimum, for the protection of persons and property, those insurances identified in Article 12, Insurance.

11.4 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 his 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 this Rider.

ARTICLE 12

INSURANCE

12.1 GENERAL

12.1.100 All policies shall be issued by insurance companies known to be financially sound and authorized to conduct such business under the laws of the Commonwealth of Pennsylvania.

12.1.101 Coverage shall be in place prior to any work taking place on site, and shall be maintained without interruption until the time specified for each type of insurance in the following paragraphs, or unless termination of coverage is approved by the System.

12.1.102 At any time the insurance provisions of the agreement, as described herein, are not being maintained, the work of the Contractor may be terminated or suspended, according to the provisions of Article 8, Suspension of the Work, and Article 13, Termination of the Agreement.

12.2 REQUIRED DOCUMENTATION

12.2.100 Prior to Notice to Proceed, the Contractor shall furnish to the System a Certificate from an Insurance Carrier authorized to do business in Pennsylvania indicating the existence of the insurance required under this Article, the amount of the deductible, and the amount of coverage of such insurance. The Certificate shall contain a provision stating that coverages will not be canceled or changed prior to the expiration date without giving 30-day prior written notice to the System. The System shall be named as Additional Insured on the Automobile and General Liability policies.

12.2.101 Upon request, the Contractor shall submit a certified copy of the entire policy to the System.

12.3 CONTRACTOR'S LIABILITY INSURANCE

12.3.100 The Contractor shall purchase and maintain such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

a. Claims under Workers Compensation and other similar employee benefit laws.

b. Claims for damages because of bodily injury to, occupational sickness or disease of, or death of the Contractor's employees.

c. Claims for damages because of bodily injury to, sickness or disease of, or death of any person other than the Contractor's employees.

d. Claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom.

12.3.101 The Contractor's commercial general liability insurance and automobile liability insurance shall be written for not less than $1,000,000 for injuries including accidental death to any one person, and subject to the same limit for each person, in an amount not less than $3,000,000 for each occurrence. The Contractor's property damage liability insurance shall be in an amount not less than $3,000,000 for each occurrence.

12.3.102 The commercial general liability insurance shall include the following.

a. Completed operations and products liability coverage.

b. Contractual liability coverage as necessary to meet the Contractor's obligations under Third Party Indemnification and System Indemnification and Hold Harmless.

c. Special property damage liability coverage commonly referred to as XCU (explosion, collapse, and underground damage), unless the System approves a Contractor's request to exclude this coverage.

d. Adequate protection against special hazards when required (i.e. blasting, etc.).

12.3.103 The Contractor's liability insurances shall remain in force until the completion of all work or the end of the basic warranty period, whichever is later.

12.4 SUBCONTRACTORS' LIABILITY INSURANCE

12.4.100 The Contractor shall either require each of its subcontractors to procure and to maintain during the life of its subcontract Workers Compensation, commercial general liability, automobile liability, and property damage liability insurance of the type and in the same amounts as specified in this Article, or insure the activity of its subcontractors in its own insurance policies.

12.4.101 The Contractor shall submit to the System, prior to any subcontractors or sub-subcontractors commencing of any on site work, evidence that the subcontractors or sub-subcontractors are covered by insurance as required herein.

12.5 PROPERTY INSURANCE

12.5.100 The Contractor shall purchase and maintain property insurance for all insurable work included in the Contract, in the amount of the original Contract Sum as well as subsequent changes thereto, in the names of the System and the Contractor as their respective interests may appear, in full 100% of the insurable value thereof, including all of the following.

a. Items of labor and materials connected therewith whether in or adjacent to the structure insured.

b. Materials in place or to be used as part of the permanent construction, including surplus materials, protective fences, bridges, temporary structures, miscellaneous materials, and supplies incident to the work.

12.5.101 Property insurance shall include and fully protect the interest of the System, the Commonwealth of Pennsylvania, the Contractor, subcontractors, and sub-subcontractors. The Contractor shall submit to the System for its approval all items deemed to be uninsurable.

12.5.102 Property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse due to ice and snow, temporary structures, and debris removal as associated hereto. Where the project site is within a designated flood zone, flood insurance shall also be provided.

12.5.103 The risk of damage to the construction work due to the perils covered by the said property insurance with extended coverage, is that of the Contractor, and no claims for such loss or damage will be recognized by the System, nor will such loss or damage excuse the complete and satisfactory performance of the Contract by the Contractor.

12.5.104 The Contractor's property insurances shall remain in force until the acceptance of the completed work by the System. The Contractor shall maintain adequate property insurance to cover any materials and temporary facilities remaining after acceptance of the completed work.

12.5.105 Partial occupancy or use in accordance with Article 10.1.101 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise.

ARTICLE 13

TERMINATION OF THE AGREEMENT

13.1 TERMINATION FOR CONVENIENCE

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

13.1.101 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.

13.1.102 Upon termination of this Agreement, as provided by this Article, full and complete adjustment and payment of all amounts due the Contractor arising out of this Agreement, 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 13.1.102 shall not exceed the total amount of the Agreement, 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 14, Disputes.

13.2 TERMINATION FOR DEFAULT OF THE CONTRACTOR

13.2.100 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.

13.2.101 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.

13.2.102 Should the Contractor fail to cure said default within the specified time, the System may terminate the Agreement 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.

13.2.103 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 reprocurement, and any other damages which the System has incurred in accordance with the Agreement, 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 14, Disputes.

13.2.104 In the event the System wrongfully terminates the contract, as determined by procedures in Article 14, Disputes, such termination shall be considered a termination for convenience.

ARTICLE 14

DISPUTES

14.1 DISPUTES BETWEEN THE CONTRACTOR AND THE SYSTEM

14.1.100 This Article applies to any dispute, disagreement, question, or other matter between the Contractor and the System arising under or by virtue of this Agreement. Such matters shall be initiated as a Controversy.

14.1.101 A Controversy means 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.

14.1.102 A Controversy shall be considered a Claim if and when the Contractor initiates a written request in accordance with Article 14.2.102.

14.1.103 Controversies and Claims shall be processed as called for in this Article, until resolved or waived.

14.1.104 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.

14.1.105 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 claim for the Controversy.

14.1.106 The Disputes processes in the Article, and Controversies introduced under them, shall survive Contract termination.

14.2 PROCEDURES

14.2.100 **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 Controversy. The request must be submitted not later than 21 days after occurrence of the event giving rise to the Controversy, or not later than 21 days after the Contractor first recognizes the condition giving rise to the Controversy, 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.

14.2.101 **Step 2, Contracting Officer's Pre-Claim Conference and Determination**

Contractor's Written Request. The Contractor shall submit, in writing to the University Contracting Officer, a request for the University's Final Written Determination on the Controversy. The request must be submitted not later than 7 days after receipt of the University's Initial Written Determination, or not later than 21 days after the Contractor submitted the written request to the University Project Manager and no University Initial Written Determination has been received, whichever is later.

Pre-Claim Conference. The University Contracting Officer will, in a timely manner, hold a Pre-Claim Conference with the Contractor to discuss the Controversy.

University Final Written Determination. The University Contracting Officer will render the University's Final Written Determination within 7 days after the Pre-Claim Conference. If this Determination is not acceptable to the Contractor, the Contractor may proceed with Step 3.

14.2.102 **Step 3, Agency Claim Review**

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 not later than 14 days after the Pre-Claim Conference was held if the Contractor has not received the University's Final Written Determination, or not later than 28 days after the Contractor submitted the written request to the University Contracting Officer and no Pre-Claim Conference was held, 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 15 days from the mailing date of the Agency's Final Decision, or 135 days from the filing of the Agency Claim Review, unless the 120-day period was extended, to file a Claim with the Board of Claims.

14.3 ADMINISTRATIVE AND JUDICIAL REVIEW RIGHTS

14.3.100 Board Of Claims. The filing of a Claim with the Board of Claims is under the exclusive jurisdiction provided in the Commonwealth Procurement Code (62 P.S. 1721, et seq.), in the manner and under the terms and conditions provided therein.

14.3.101 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.

14.4 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.

14.5 DISPUTES BETWEEN CONTRACTORS

14.5.100 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.

14.5.101 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 Philadelphia or Pittsburgh Regional Office of the American Arbitration Association, and a copy shall be filed with the System. The demand for arbitration shall be made within a reasonable time after the dispute has arisen.

14.5.102 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 15

SUPPLEMENTARY DEFINITIONS

15.1 As they appear throughout the Contract Documents, the following terms are also defined herein, unless the context clearly dictates otherwise. Terms further defined or specifically defined in other parts of the Contract Documents or in the Technical Specifications take precedence for only that part or specification section.

a. The term "indicated" refers to graphic representations, notes, or schedules on the Drawings, other paragraphs or schedules in the Specifications, and similar requirements in the Contract Documents. Terms such as "shown", "noted", "scheduled", and "specified" are used to help the reader locate the reference. No limitation on location is intended.

b. Terms such as "directed", "requested", "authorized", "selected", "approved", "required", and "permitted" mean "directed by the System", "requested by the System", and similar phrases.

c. The term "regulations" includes laws, ordinances, statutes, and lawful orders issued by authorities having jurisdiction, as well as rules, conventions, and agreements within the construction industry that control performance of the Work.

d. The term "furnish" is used to mean "supply and deliver to the Project site, ready for unloading, unpacking, assembly, installation, and similar operations".

e. The term "install" is used to describe operations at the Project site including the actual "unloading, unpacking, assembly, erection, placing, anchoring, applying, working to dimension, finishing, curing, protecting, cleaning, and similar operations."

f. The term "provide" means "to furnish, install, complete, and ready for intended use".

g. An "Installer" is the Contractor or an entity engaged by the Contractor, either as an employee, subcontractor, or sub-subcontractor, for performance of a particular construction activity, including installation, erection, application, and similar operations. Installers are required to be experienced in the operations they are engaged to perform.

(1) The term "experienced" when used with the term "Installer" means having completed a minimum of five (5) previous projects similar in size and scope to this Project, being familiar with the precautions required, and having complied with requirements of the authority having jurisdiction.

(2) Use of titles such as "carpentry" is not intended to imply that certain construction activities must be performed by accredited or unionized individuals of a corresponding generic name, such as "carpenter". It also does not imply that requirements specified apply exclusively to tradespeople of the corresponding generic name.

(3) When the Technical Specifications require the performance of certain activities by specialists, those activities must be performed by specialists that are recognized experts in the activities to be performed. Even though the Contractor has no choice or option in the performance in the activities, the ultimate responsibility for fulfilling Contract requirements remains with the Contractor.

(4) The requirements in (1), (2), and (3) above shall not be interpreted to conflict with enforcement of building codes and similar regulations governing the Work. It is also not intended to interfere with local trade union jurisdictional settlements and similar conventions.

h. The “Project site” is the space available to the Contractor for performance of construction activities, either exclusively or in conjunction with others performing other work as part of the Project. The extent of the Project site is shown on the Drawings and may or may not be identical with the description of the land upon which the Project is to be built.

i. A "testing laboratory" is an independent entity engaged to perform specific inspections or tests, either at the Project Site or elsewhere, and to report on and, if required, to interpret results of those inspections or tests.