

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

**STANDARD FORM OF AGREEMENT
FOR
CENTRALLY-HELD, OPEN-END CONTRACT
FOR
CONSTRUCTION MANAGEMENT SERVICES**

BETWEEN THE SYSTEM AND THE PROFESSIONAL

CONTRACT NO. _____

This Agreement is made and entered into
in Dauphin County, Pennsylvania, by and between

**the State System of Higher Education
Commonwealth of Pennsylvania**

2986 North Second Street
Harrisburg, PA 17110

hereinafter called the "System"

and

---Professional's Name---

---address---

---address---

a corporation / LP / LLP / LLC / partnership / etc.

organized in the state of _____

Federal I.D. No. _____,

hereinafter called the "Professional."

The Professional agrees to be retained to provide construction management services, as identified in the Agreement Documents, on an as-needed basis and in accordance with the terms and conditions in the Agreement Documents.

This Agreement shall not be effective until executed by all necessary Commonwealth officials as provided by law.

TYPE AND ADMINISTRATION OF THE AGREEMENT

This Agreement is an indefinite-quantity, indefinite-delivery contract. Services, with associated prices, will be ordered against the Agreement if and when needed by the System and/or by any of its universities. Each Individual Work Order will identify the services required under that Individual Work Order, and may refer to this Agreement's General Conditions, rather than re-stating the services and tasks required. All services contained in Individual Work Orders shall be in accordance with the scope of work and limitations defined within this Agreement.

TERM OF AGREEMENT

The term of this Agreement shall be two years from the Effective Date of this Agreement. With mutual agreement of the System and Professional, this Agreement may be renewed for up to two consecutive renewals of two years each. The duration of this Agreement may not exceed a total of six years.

Notices to Proceed will be associated only with Individual Work Orders.

Individual Work Orders issued prior to the expiration of this Agreement will continue in force until completed or terminated.

AGREEMENT SUM AND COMPENSATION

The Agreement will not have any specific dollar value attached to it. The value of the Agreement will be determined by the value of Individual Work Orders issued under it. Therefore, the value of this Agreement may exceed \$500,000,

There is no limit to the Professional's total fees under any Individual Work Order.

There is no limit to the Professional's total fees that can be ordered under all Individual Work Orders during a year, during an Agreement term, or during the duration of the Agreement, including all renewals.

The Billable Rates for this Agreement are attached. The specific Billable Rates for employee classifications as listed shall be used for Individual Work Orders.

The Professional's Billable Rates and compensation under any Individual Work Order will be subject to the System's Professional Fee Cost Principles dated January 23, 2019.

Requirements pertaining to compensation and payment are contained in this Agreement's General Conditions. The Professional's compensation and payment for each Individual Work Order will be negotiated.

ESCALATION CLAUSE FOR AGREEMENT RENEWAL

As the basis for any increase in the Billable Rates for any subsequent renewals of this Agreement, the Consumer Price Index For All Urban Consumers (CPI-U), US City Average, as published by the United States Department of Labor, Bureau of Labor Statistics, shall be used.

The CPI-U Index available at the award of this Agreement is for June 2019, and it is 256.143. This CPI-U Index shall be compared to the most recently available CPI-U Index when the Agreement is renewed. The percent increase in the Billable Rates for each renewal shall be the same as the percent increase in the CPI-U Index.

SELECTION OF PROFESSIONALS FOR INDIVIDUAL WORK ORDERS

Universities will select firms for Individual Work Orders from those firms holding Agreements. Firms will be selected either directly or through a form of limited competition. The university and the firm will discuss the services required, and the firm shall provide a proposal describing the services and the fee. The university and the firm will negotiate the scope of services and the fee. If agreement is reached, the university will issue the Individual Work Order. If agreement is not reached, or the Individual Work Order is not approved by the System, the university will select a different firm and start the process again.

Alternately, the System may select firms for Individual Work Orders for services which the System is utilizing, and in that case, the System will proceed with the process described above.

NOTICE

Notices, to be effective, shall be in writing, and if to the System, shall be directed to the Contracting Officer, and, if to the Professional, shall be directed to the address set forth in the caption of this Agreement, unless and until notice of another address shall be given hereunder, in which case notices shall be so directed to the address last so given. Unless otherwise specifically identified by any provision of this Agreement, a notice shall be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally-recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

AGREEMENT DOCUMENTS

The terms, conditions, requirements, and considerations of this Agreement are specified in the Agreement Documents, which include this Standard Form of Agreement plus the following:

General Conditions	consisting of 28 pages
Billable Rates, <i>dated</i> _____	consisting of ___ <i>page(s)</i>

Additionally, this Agreement may be amended or changed by any of the following:

- Any Amendments properly executed after the Effective Date of this Agreement
- Any Renewals

IN WITNESS WHEREOF, this Standard Form of Agreement has been executed and delivered as of the date set forth in the caption hereof;

FOR THE PROFESSIONAL	FOR THE COMMONWEALTH
<p>If the Professional Is an Individual, Proprietorship, or Partnership</p> <p>_____</p> <p>Individual or Partner Date</p> <p>_____</p> <p>printed name</p>	<p>State System of Higher Education</p> <p>_____</p> <p>Steven R. Dupes Date</p> <p>Assistant Vice Chancellor for Facilities Contracting Officer</p>
<p>If the Professional is a Corporation, LP, LLP, or LLC</p> <p>_____</p> <p>Pres./VP/_____ Date</p> <p>_____</p> <p>printed name</p> <p>_____</p> <p>Sec./Treas./_____ Date</p> <p>_____</p> <p>printed name</p>	<p>APPROVED AS TO FORM AND LEGALITY</p> <p>_____</p> <p>Legal Counsel Date</p> <p>State System of Higher Education</p> <p>_____</p> <p>Office of General Counsel Date</p> <p>Commonwealth of Pennsylvania</p> <p>_____</p> <p>Office of Attorney General Date</p> <p>Commonwealth of Pennsylvania</p>

- If the Professional is an Individual, Proprietorship, or General Partnership, one signature is required.
- If the Professional is a Corporation, LP, LLP, or LLC, two signatures are required. For a Corporation, one must be the President or Vice President, and the second must be the Secretary or Treasurer. For an LP, LLP, or LLC, enter the title at the blank.
- The Professional can delegate signatory authority to other individuals by means of a certified Board Resolution presented with this Standard Form of Agreement.

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

**GENERAL CONDITIONS
FOR THE
CONSTRUCTION MANAGEMENT AGREEMENT**

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ARTICLE 1 - DEFINITIONS

1.1 DEFINITIONS

As used in these General Conditions, as well as in the Agreement documents and in any Individual Work Orders, the following terms shall be as described herein, unless the context clearly dictates otherwise.

- a. System means the State System of Higher Education, Commonwealth of Pennsylvania; the Office of the Chancellor of the State System of Higher Education; University or Universities of the State System of Higher Education; or any authorized representative of any of them. In Article 9, however, the terms System and University are used to identify those specific entities.
- b. Professional means a firm contracted by the System to perform construction management services specified in this Agreement. Professional shall include all of the firm's employees, as well as subconsultants and other subcontracted entities, executing the services of this Agreement on behalf of the firm.
- c. Agreement means the Agreement for Centrally-Held Open-End Contract for Construction Management Services, of which these General Conditions are made a part. The documents comprising the complete Agreement Documents are defined in the Standard Form of Agreement.
- d. Services means any of the construction management services falling within the scope of this Agreement, or within the scope of any Individual Work Order, as applicable.
- e. Project means the total effort of design, construction, renovation, improvement, addition to, and/or repair of a facility. The total effort is comprised of a design professional agreement and one or more construction contracts, plus other necessary contracts, agreements, and purchases for management and equipment, and possibly for furniture and furnishings, entered into by the System.
- f. Design Professional means a professional architect, engineer, or other consultant contracted by the System to provide design services for the Project under an agreement for design professional services. Design Professional shall include all of the firm's employees and subconsultants engaged in executing the design services. The term design professional may not necessarily begin with capital letters in these documents.
- g. Design Professional Agreement means a contract for design professional services, executed between the System and a design professional, for services for the Project. The term design professional agreement, or design agreement, may not necessarily begin with capital letters in these documents.
- h. Contractor or Construction Contractor means a firm contracted by the System to perform construction work for the Project under a construction contract. Contractor or construction contractor shall include all of the firm's employees, subcontractors, and suppliers engaged in executing the construction work. The terms contractor and construction contractor may not necessarily begin with capital letters in these documents.
- i. Contract or Construction Contract means a contract for construction, executed between the System and a contractor/construction contractor, for construction work on the Project. The terms contract and construction contract may not necessarily begin with capital letters in these documents.
- j. Individual Work Order means a separate work order or purchase order issued under this Agreement.

ARTICLE 2 - GENERAL PROVISIONS

2.1 OPEN-END AGREEMENT

All services shall be ordered by, and delivered pursuant to, Individual Work Orders. The articles, terms, and conditions contained in these General Conditions shall generally apply to Individual Work Orders, even if the term Individual Work Order is not used in that article, term, or condition.

2.2 MATERIAL INCORPORATED INTO AGREEMENT

The Professional's services shall be governed by all the articles, terms, and conditions of the Agreement Documents, as defined in the Standard Form of Agreement, plus the following:

- a. any additional special conditions provided for this Agreement
- b. any applicable statutes, codes, ordinances, and System and University policies

The Professional's services shall be guided by the contents of the following:

- a. the System's Manual for the Procurement & Administration of Design Professional Services
- b. the System's Manual for the Procurement & Administration of Construction Contracts

2.3 NOTICE TO PROCEED

If the Professional does work prior to a Notice to Proceed being issued by the System, the Professional is proceeding at its own risk.

2.4 RIGHT TO ORDER CHANGES

The System, without invalidating the Agreement, may, by written order, order changes within the general scope of the Agreement or any Individual Work Order. The Agreement or any Individual Work Order may be changed only after that document has been properly executed by all necessary Commonwealth officials as provided by law. All such changes shall be implemented by either an Amendment or a Fiscal Adjustment. The Professional agrees to provide the service in accordance with any Amendment or a Fiscal Adjustment.

Changes within the general scope of the Agreement may be ordered by the System. Changes not within the general scope of the Agreement must be agreed upon by both parties.

An Amendment is a written order to the Professional, signed by the System and by all necessary Commonwealth officials as provided by law, and issued after the execution of the Agreement, authorizing a change in the terms and conditions of the Standard Form of Agreement and/or the General Conditions, and/or any other terms and conditions provided in any other Agreement Documents. The terms and conditions may be changed only by Amendment.

A Fiscal Adjustment is a written order to the Professional, signed by the System, and issued after the execution of the Agreement or any Individual Work Order, authorizing a change in the scope of services or an adjustment in the amount and/or schedule of the Agreement or of that Individual Work Order.

If the Professional desires an increase in the amount of the Agreement or of any Individual Work Order, written notice shall be given to the System before proceeding to execute any services which are the subject of the desired increase.

Any dispute by the Professional in regard to the services, price, or schedule under any Amendment or a Fiscal Adjustment shall be addressed under Article 9.

ARTICLE 3 - THE SYSTEM'S RIGHTS AND RESPONSIBILITIES

3.1 SYSTEM'S REPRESENTATIVES

The System will designate, in writing, a person to act as the System's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, and interpret and define the System's policies and decisions with respect to the Professional's services.

Only those representatives so designated have authority to change, modify, or alter the services required, or incur or cause to be incurred additional obligations beyond the Agreement provisions.

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 Professional shall, within three (3) days but before any services addressed in the conflicting directions, instructions, or interpretations are performed, bring the conflict to the attention of those representatives for resolution. In the event those representatives do not resolve the conflict, the Professional shall bring the conflict to the attention of the System for resolution.

3.2 SYSTEM-PROVIDED INFORMATION AND DOCUMENTS

The System will provide to the Professional, or place at the Professional's disposal, all information and documents required for the Project and/or for the services to be provided.

If the information and documents furnished and available are not sufficient for the initiation of services, the Professional shall immediately notify the System.

The Professional shall rely on information provided by the System for the purpose under which it is offered.

3.3 INTERPRETATION OF INSTRUCTIONS

The System shall be the sole interpreter of any printed instructions, and shall have the right to require conformance with same at all times during the services under the Agreement.

3.4 SYSTEM TO ACT PROMPTLY

The System will respond to all submissions and requests for information by the Professional within a reasonable time so as not to delay the services of the Professional. The System will give prompt written notice to the Professional whenever the System observes or otherwise becomes aware of any development that affects the scope or timing of the Professional's services.

3.5 EFFECT OF SYSTEM'S FAILURE TO DISAPPROVE WORK

The System will examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by the Professional, obtain advice of an attorney, insurance counselor and other consultants as the System deems appropriate for such examinations, and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the Professional.

Any failure of the System to disapprove or reject work submitted by the Professional shall not constitute an acceptance of the work such as to relieve the Professional of its full responsibility to the System for the proper and professional performance of services.

3.6 OWNERSHIP RIGHTS

All studies, reports, working drawings, specifications, special requirements, costs estimates, and other data compiled by the Professional and delivered to the System under this Agreement shall not be copy written and shall become the sole property of the System. The System shall have unrestricted authority to reproduce, distribute, and use any of these documents. The Professional is not liable for any reuse of these documents by the System for other than their intended purpose.

The System shall have no ownership rights to any of the Professional's proprietary materials, data, software, methodologies, or other intellectual property that the Professional brings to the Project and/or has previously developed with or obtained from third parties.

3.7 RIGHT TO AWARD OTHER AGREEMENTS/CONTRACTS

The System reserves the right to award other professional agreements and/or contracts in conjunction with the Project.

ARTICLE 4 - THE PROFESSIONAL'S RIGHTS AND RESPONSIBILITIES

4.1 PROFESSIONAL-CLIENT RELATIONSHIP

In performing the services required by the Agreement, the Professional shall act as an independent contractor and not as an employee or agent of the System.

The Professional is directly responsible to the System office that awarded the Agreement or issued the Individual Work Order, and only that office may give instructions that are binding in relation to the Agreement and/or that Individual Work Order.

The System may demand by written justification to the Professional the withdrawal from the Project of any person employed by the Professional who the System deems, in its sole discretion, to be insufficiently qualified or incompetent for the services, or guilty of misconduct.

4.2 PERFORMANCE OF DUTIES AND REPRESENTATION AS TO QUALIFICATION

The Professional specifically represents to and covenants with the System that the Professional and their consultants, agents, employees, and officers possess and shall possess the experience, knowledge, and skills necessary to qualify them individually for the particular services they perform.

The Professional agrees to exercise reasonable and ordinary skill, care, and diligence in the application of professional knowledge to accomplish the purpose for which the Professional has been retained.

4.3 CONFLICTS OF INTEREST

The Professional may not have any financial interest in any firm that is providing design, construction, commissioning, or other related services on the Project, unless expressly approved by the System. Additionally, the Professional shall not have, under separate agreement or contract with the System, made any recommendations to the System concerning the need for services under this Agreement.

4.4 PROFESSIONAL'S SUBCONSULTANTS

The Professional shall acquire all subconsultants that are necessary for performance of the services.

The Professional shall utilize the subconsultants that were specified in the Professional's proposal that was submitted in response to the Request for Proposals. If the Professional is not able to utilize a subconsultant that was specified in the proposal, to the extent represented in the proposal, the Professional shall submit, in writing, the name and qualifications of a substitute subconsultant to the System for review and acceptance prior to them performing any services. The System's acceptance of that subconsultant is not a recognition by the System that that subconsultant is qualified to perform certain services. The System's acceptance shall not be unreasonably withheld.

The Professional shall not subcontract with any other person or entity to perform all or any part of the services to be performed under this Agreement without the prior written consent of the System.

The Professional shall be responsible for all services performed by all subconsultants employed by the Professional. The services of all subconsultants shall conform to the requirements of the Agreement and industry standards.

The relationship between the Professional and a subconsultant limits the participation of the subconsultant as follows:

- a. A subconsultant has no privity of contract with the System.
- b. A subconsultant cannot individually or as a firm submit a bid or fee proposal directly or indirectly to the System, or to any prime contractor, subcontractor, contractor or firm that is involved in a bid or proposal submittal for a project on which the subconsultant has provided or is providing design or other professional services for compensation.
- c. A subconsultant cannot individually, or as a firm, have any personal interest or holding in any firm or company that bids or proposes as a prime contractor, subcontractor, or sub-subcontractor for a project on which the subconsultant has provided or is providing design or other professional services for compensation.
- d. A subconsultant cannot individually, or as a firm, have any personal interest or holding, in any firm that bids or proposes as a manufacturer, distributor, or supplier on any project on which the subconsultant has provided or is providing design or other professional services for compensation.
- e. A subconsultant shall inform the System of any current or former Commonwealth employees on the subconsultant's payroll.

4.5 COMPLIANCE WITH LAW

In the performance of the Agreement, the Professional shall comply with all applicable federal, state, and local laws, regulations, and ordinances, insofar as they are applicable to and have jurisdiction over the Project and/or over the services to be provided.

4.6 COOPERATION WITH LOCAL GOVERNMENT ENTITIES

The Professional shall comply with any and all requirements of local municipalities' zoning, planning, permitting, and supervisory bodies, as they are applicable to and have jurisdiction over the Project and/or over the services to be provided.

4.7 PROFESSIONAL'S WORK REVIEWED BY OTHERS

As part of the review effort of the System, the Professional's schedules, estimates, studies, reports, sketches, drawings, specifications, and other submittals may be subject to review by other professionals retained by the System. In all such cases, the Professional will be notified of the System's intent to do so and shall cooperate with such review as directed by the System.

4.8 ADHERENCE TO TIME SCHEDULE

Time is of the essence. The Professional shall provide their services in a manner so as not to delay the Project or service. If the Professional becomes aware that they are not able to provide their services to meet the schedule, or that the schedule is not attainable, the Professional shall notify the System.

4.9 ATTENDANCE AT CONFERENCES AND MEETINGS

The Professional's authorized representative, and the Professional's subconsultants when appropriate, shall attend all conferences and meetings as required by the System. Within one week after each conference or meeting, the Professional shall submit to the System detailed minutes of that conference or meeting.

4.10 LIMITATIONS OF RESPONSIBILITIES

The Professional shall not be responsible for the acts or omissions of any design professional, construction contractor, or other contractor, or of any of their subcontractors, suppliers, agents, or employees, or any other persons (except the Professional's own subconsultants, employees, and agents) at the site or otherwise furnishing or performing any of the design professional's or construction contractors' work. However, nothing contained herein shall be construed to release the Professional from liability for failure to properly perform duties and responsibilities assumed by the Professional in this Agreement or in the Agreement Documents.

The Professional may issue instructions to the design profession or construction contractors and may act on behalf of the System, to the extent provided in this Agreement and those other agreements/contracts, but has no authority to obligate the System for additional costs or other liabilities without the express written content of the System.

The Professional shall not be responsible for supervision or have control over the contractors' work, nor shall the Professional have authority over or be responsibility for the means, methods, techniques, or procedures of construction selected by the contractors. Accordingly, the Professional can neither guarantee the performance of the construction contracts by the contractors nor assume responsibility for the contractors' failure to perform their work in accordance with the contract documents. Similarly, the Professional cannot guarantee the performance or completion of the work, in accordance with any Project schedule, by any construction contractor.

Any cost opinions or estimates provided by the Professional will be on the basis of experience and judgment. But since the Professional has no control over market conditions or bidding procedures, the Professional cannot and does not warrant that bids, ultimate construction cost, or Project economics will not vary from such opinions or estimates.

The Professional shall not be responsible for safety precautions and programs incident to the work of the contractors, or for any failure of the contractors to comply with laws, rules, regulations, ordinances, codes, or orders applicable to the contractors furnishing and performing their work.

4.11 PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY

The Professional warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either:

- a. the design of any product or process provided or used in the performance of the Agreement which is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law, or
- b. any copyrighted matter in any report, document, or other material provided to the System under the Agreement.

The Professional shall indemnify and hold the System harmless against any suit or proceeding brought against the System on account of any alleged patent, copyright, or trademark infringement in the United States of any of the products provided or used in the performance of the Agreement, unless such product was specified by the System for use by the Professional. This is upon condition that the System shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same. As principles of governmental or public law are involved, the System may participate in or choose to conduct, in its sole discretion, the defense of any such action. If information and assistance are furnished by the System at the Professional's written request, it shall be at the Professional's expense, but the responsibility for such expense shall be only that within the Professional's written authorization.

The Professional shall indemnify and hold the System harmless from all damages, costs, and expenses, including attorney's fees that the Professional or the System may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of the Agreement, unless such product was specified by the System for use by the Professional. If any of the products provided by the Professional in such suit or proceeding are held to constitute infringement and the use is enjoined, the Professional shall, at its own expense and at its option, either procure the right to continue use of such infringement products, replace them with non-infringing substantially-equal products, or modify them so that they are no longer infringing. If the Professional is unable to do any of the preceding, the Professional agrees to remove all the equipment or software which are obtained contemporaneously with the infringing product, or, at the option of the System, only those items of equipment or software which are held to be infringing, and to pay the System:

- a. any amounts paid by the System towards the purchase of the product, less straight-line depreciation;
- b. any license fee paid by the System for the use of any software, less an amount for the period of usage; and
- c. the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance paid for.

The obligations of the Professional under this paragraph continue without time limit.

4.12 ATTENDANCE AND TESTIMONY AS WITNESS

Disputes Caused By Professional's Failure. In the event of a dispute between the System and any person caused by the failure of the Professional to administer services in accordance with this Agreement, the Professional, along with appropriate subconsultants and other necessary, qualified, and authorized representatives, shall attend all conferences, hearings, and court proceedings without any additional charge to the System. If the final disposition of the dispute does not support such failure of the Professional, then the Professional shall be compensated for the cost of such services.

Disputes Caused By Others. In the event of a Project related dispute between the System and any person caused by any entity other than the Professional, the System may request the Professional to serve as a witness. If requested, the Professional shall enter into an Agreement detailing the scope and estimated cost of the required witness services. The Professional shall prepare testimony and testify, as to facts and as to expert opinion, in all such proceedings on behalf of the System. The Professional shall be compensated periodically for the cost of such services until services are complete.

Expert Witness. In a dispute between the System and any person or entity other than the Professional, the System may request the Professional to serve as an expert witness.

4.13 PROFESSIONAL EVALUATIONS

By signing this Agreement, the Professional consents to the evaluation of its performance by the System, or its representatives, and the Professional understands that any such evaluation may be used in future selections of professionals. The System, or its representatives, shall provide the Professional with notice of any unsatisfactory evaluations and the reasons therefore. In such cases, the Professional shall be entitled to submit a reply.

Furthermore, the Professional's subconsultants may also be evaluated. The Professional is required to notify each of its subconsultants that in contracting with the Professional, the subconsultant consents to the System's evaluation of the subconsultant and to the use of any such evaluation in future selections of professionals.

ARTICLE 5 - SCOPE OF SERVICES

5.1 AGENCY-CM SERVICES

Outlined in this Article are typical Agency-CM services, as well as other CM services, that may be requested from the Professional as part of an Individual Work Order. The System and the Professional shall agree upon the tasks applicable and desired for each Individual Work Order.

5.2 COORDINATION

The Professional may be called upon to assist in administering and/or coordinating the activities of other project agreements and contracts; coordinating with university activities, the campus community, local municipalities, Commonwealth Agencies, and the general public; coordinating the technology implementation strategy and with its installation/construction; and coordinating the procurement and installation of furniture, furnishings, and equipment.

5.3 REPORTING

The Professional may be called upon to establish and maintain a management information and reporting system or platform to meet project and System requirements.

The Professional may be called upon to provide timely and clear reports concerning construction progress, milestones, cost and budget information, and other project information.

5.4 PROGRAMMING

The Design Professional, in consultation with the System, will provide the outline of the project program to the Professional. The Professional shall review the general project characteristics and performance requirements. The Professional shall provide an evaluation of the initial milestone dates and construction allocation, recommending adjustments in the schedule and program as well as giving estimates to accomplish the project goal. The Professional shall review the site selection and analysis, as appropriate. The Professional shall also recommend program factors and any energy savings for the budget to be included in the program, including a critique of the program issues and any energy savings, in its design reviews.

5.5 SCHEDULING

The Professional shall develop a master schedule that includes the entire project, including design and construction. The schedule shall be updated at each design submission and shall indicate any critical and long-lead items. The Professional shall assist the Design Professional in determining the construction duration, for inclusion with the final design submission.

5.6 COST ESTIMATING

The Design Professional will develop its own cost estimates at each design submission. The Professional shall develop its own independent cost estimates. All cost estimates shall be broken down by separate prime contractor, and will be further broken down in CSI format or by building system components.

Beginning with the sketch design and continuing through final design submission, the Professional shall monitor the project design with the Design Professional to confirm that the project cost remains within allocation. The Professional shall develop an independent cost estimate at each submission of the contract documents and submit this estimate to the System. The Professional and the Design Professional shall compare and reconcile their independent estimates, reaching an agreement that the reconciled preliminary project estimate as planned and submitted is within the allocation. The Professional's estimate shall reflect the detail appropriate for each submission. An appropriate design contingency shall be identified to reflect the incompleteness of the construction documents.

When the final Project design is ready for submission to the System, the Professional and Design Professional shall compare their independent final estimates, reaching an agreement that the reconciled final project estimate as planned and submitted is within the allocation. It is the expectation of the System that the final estimate shall provide a detailed and itemized take-off of construction materials and associated labor. It is the System's expectation that the final estimate be within five percent of the subsequent lowest responsible bidder. The final estimate shall reflect consideration for current material and labor costs, applicable to the specific project location, expected escalation through construction, cost data from key local suppliers and sub-contractors, costs associated with scheduling complexities including phased construction, and other hard or soft costs expected to affect bidders' pricing.

5.7 CONSTRUCTABILITY REVIEWS

The Professional shall review and comment on the design solution developed by the Design Professional.

The Professional shall provide document review at each design submission, by conducting a review of the plans and specifications and providing a list of comments to the System and the Design Professional on constructability of the design, alternative materials, and construction methods. The Professional shall review all project drawings and specifications for clarity, completeness, coordination, economic feasibility, and schedule impact. The review shall confirm that plans and specifications are consistent and do not contradict themselves and that vague or incomplete requirements are avoided. The review shall also check: that the requirements for each separate prime contractor are consistent with trade practices, clearly delineated, and do not conflict; that unique conditions and material transitions are clearly delineated and detailed; that materials and equipment are specified and where appropriate, scheduled; that the selected materials are available and appropriate for the anticipated work conditions; that selected materials and products are economically viable; that adequate space is provided to permit the safe installation, service, and maintenance of the various building components and equipment; and that building components do not have spatial conflicts. The Professional shall also review the usability of the various building components, locations of switches, receptacles, signage, cleanouts, access doors, ladders, roof hatches, hose bibs, etc.

5.8 VALUE ENGINEERING

The Professional may be asked to facilitate and conduct value-engineering (VE) reviews with the Design Professional. VE should consider construction methods, selection of materials, systems and equipment, cost, and schedule. The Professional should recommend alternative solutions and assist the Design Professional to reach consensus on VE decisions. As the Project proceeds to final design, the Professional should compile a list of VE items with costs that could be used as base bid additives, deducts, or alternates.

5.9 BID PHASE

The Professional may be called upon to recommend strategies for bid packages and bid formats.

The Professional may be called upon to conduct pre-bid conferences and/or bid openings.

The Professional may be called upon to assist in answering pre-bid questions and to assist in preparing addenda.

The Professional may be asked to evaluate bids, make reference checks, and make recommendations for award.

5.10 CONSTRUCTION ADMINISTRATION

The Professional shall monitor the construction process to anticipate difficulties, resolve issues early, and keep the work flowing. Specific services during construction may include construction scheduling, inspection of in-place work, quality assurance reviews, shop drawing receipt and distribution, change order processing, payment processing, and development of record drawings.

5.11 SCHEDULING

The Professional may be called upon to take an active role with the Project Schedule, in one of several manners.

Active Schedule Management. The Professional may be called upon to be responsible for the Project Schedule. In this scenario, the Professional shall prepare the Project Schedule, with input from and in coordination with the several separate prime construction contractors. The Professional shall then also be responsible for schedule management, updates, and reporting throughout the duration of the project.

Assisting Schedule Management. The Professional may be called upon to assist the lead separate prime contractor with his/her responsibility for the Project Schedule. In this scenario, the Professional shall provide assistance in the preparation of the Project Schedule, either with practical assistance with construction practice and schedule logic, and/or with technical assistance in preparing and maintaining the project schedule software file. The Professional may then also assist with continuing schedule management, updates, and reporting throughout the duration of the project.

Passive Schedule Management. The Professional may be called upon to provide assistance to the System in reviewing and monitoring the Project Schedule throughout the duration of the project.

Expert. The Professional may be called upon to provide, in special situations, "expert witness" Project Schedule review and analysis in support of the System.

5.12 CLAIMS CONSULTING

The Professional may be called upon to provide a variety of reviews and analyses to assist the System in the processing, review and analysis of, and dispositioning of claims (contract disputes) submitted by a separate prime construction contractor and/or the Design Professional. The Professional may be called upon to provide, in special situations, "expert witness" review and analysis in support of the System.

5.13 PROJECT MANAGEMENT SERVICES

Outside of typical Agency-CM services, the Professional may be requested to provide services, functions, and tasks normally performed by the System's internal Project Managers. In doing so, the Professional may be called upon to manage one or more simultaneously-occurring facilities projects of various scopes and sizes. Management may include, but is not limited to,

planning, coordination, administration, directing, controlling, reviewing, scheduling, inspecting, budgeting, and reporting, and should provide continuity through the planning, design, bidding, construction, and start-up phases of projects.

5.14 OTHER CM-RELATED SERVICES

Outside of typical Agency-CM services, the Professional may be requested to provide other services that could be categorized as CM services, and as proposed by a firm and accepted by the System as appropriate.

ARTICLE 6 - COMPENSATION AND PAYMENT

6.1 GENERAL

The Professional shall perform the specified services at the rates quoted in this Agreement, and/or in any Individual Work Order, and for the fees and hours negotiated. The Professional will be compensated only for services performed to the reasonable satisfaction of the System.

6.2 REIMBURSABLE EXPENSES

Reimbursable expenses will be paid only if determined to be payable by the Professional Fee Cost Principles identified in this Agreement, and/or if identified in an Individual Work Order as being payable, and/or if otherwise authorized, in writing, by the System.

6.3 ADDITIONAL COMPENSATION FOR EXTENDED TIME FRAME FOR THE PROJECT

If the actual Project time exceeds the time indicated in an Individual Work Order, at no fault of the Professional, the Professional shall be entitled to additional compensation. The amount of compensation will be a matter of negotiation between the Professional and the System at the time of such an occurrence.

The Professional shall not be entitled to additional compensation for delays in the Project or in the services being provided that are attributable to the Professional's acts or failures to act.

6.4 EXPERT WITNESS

Billable hours representing expert witness services during actual litigation, arbitration, mediation, or similar proceedings will be paid accordingly.

6.5 INVOICING AND PAYMENT

The Professional may invoice on a monthly basis, unless otherwise agreed upon by the Professional and the System. The Professional's invoices shall be itemized by line item. Invoices shall include only amounts due. The Contract Number shall be included on all invoices. In addition, the System shall have the right to require the Professional to prepare and submit a "Work In Progress" sheet that contains, at a minimum, the tasks performed, and number of hours for each.

The System will make payment not later than thirty (30) days after a proper invoice is received. The Professional shall not construe payment as acceptance of the service performed by the Professional. The System reserves the right to conduct further review of services after payment, but within a reasonable time, and to reject the service if such post-payment review discloses a defect or a failure to meet the requirements of the Agreement and/or the Individual Work Order.

If the System withholds payment of an invoice, or withholds monies which are the partial basis of an invoice, the System will provide, within 15 days of the date that the invoice is received, notification of the reason(s) for which the withholding is being made. The withholding must be representative of the value of the reason(s). Disputes about withholdings shall be subject to Article 9.

ARTICLE 7 - INSURANCE

7.1 GENERAL

All policies shall be issued by insurance companies authorized to conduct such business under the laws of the Commonwealth of Pennsylvania, and which have been issued a Financial Strength Rating of A- or better by A.M. Best Company, Inc.

Coverage shall be in place prior to any services taking place and shall be maintained without interruption until three years after final payment on the Agreement, or unless termination of coverage is approved by the System.

If the Professional fails to maintain, at any time, the requirements of this Article, the System may terminate or suspend the services of the Professional, according to the provisions of this Agreement.

7.2 REQUIRED DOCUMENTATION

The Professional shall furnish to the System a Certificate of Insurance indicating the existence of the insurance required under this Article, the amount of coverage of such insurance, and the amount of the deductible. 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 expressly endorsed as a cancellation notice recipient.

The System shall be named as an Additional Insured on the general liability and automobile policies. The coverage shall be primary and non-contributory. A copy of the policy's Additional Insureds endorsement shall be provided with the Certificate.

Renewal Certificates shall be provided to the System prior to the expiration date shown on the Certificate.

7.3 LIABILITY INSURANCE

The Professional shall purchase and maintain such insurance as will protect the System from claims set forth below which may arise out of or result from the Professional's activities under this Agreement, whether such operations be by the Professional or by a subconsultant or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage shall provide for:

- a. claims under Workers Compensation and other similar employee benefit laws, with coverage of at least the Pennsylvania-mandated minimums;
- b. claims for damages because of bodily injury to, occupational sickness or disease of, or death of the Professional's employees, and claims insured by usual personal injury coverage;
- c. claims for damages because of bodily injury to, sickness or disease of, or death of any person other than the Professional's employees, and claims insured by usual personal injury coverage;
- d. and claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom.

The Professional's general liability insurance shall be written for not less than \$1,000,000 for each occurrence, and for not less than \$3,000,000 general aggregate.

The Professional's automobile insurance shall be written for not less than \$1,000,000 combined single limit.

The Professional may have umbrella liability insurance to meet the required minimum limits for the general liability, automobile, and Workers Compensation insurances.

The Professional's general liability, automobile, and/or umbrella liability insurances shall also provide for contractual liability coverage as necessary to meet the Professional's obligations under Article 10.11 and Article 10.12.

The Professional's general liability, automobile, and/or umbrella liability policies shall contain a waiver of subrogation in favor of the System.

Upon request, the Professional shall submit a certified copy(ies) of the entire general liability, automobile liability, and/or umbrella policy(ies) to the System.

The Professional shall either require each of its subconsultants to procure and to maintain during the life of its subcontract Workers Compensation, 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 subconsultants in its own insurance policies. The Professional shall submit to the System, prior to any subconsultants commencing any on-site services, evidence that the subconsultants are covered by insurance as required herein. The Professional shall require all subconsultants' liability policies to contain a waiver of subrogation in favor of the System.

7.4 PROFESSIONAL LIABILITY INSURANCE

Prior to initiating services under any Individual Work Order, the Professional shall secure and maintain Professional Liability Insurance with a minimum coverage of \$1,000,000 to provide protection against loss resulting from negligent acts, errors and omissions arising from providing these professional services and activities. The Professional shall maintain the Professional Liability Insurance up to and including one year after Final Payment under any or all Individual Work Orders.

If the Professional is a Joint Venture, a Professional Liability Insurance Policy covering the Joint Venture may be secured and maintained to provide coverage, and a certificate of insurance to that effect shall be provided. Otherwise, each individual member of the Joint Venture shall provide evidence to the University that their individual practice policy covers that individual member's activities in the Joint Venture. If individual practice policies covering the members of the Joint Venture are provided, each policy shall provide the minimum coverage specified above, and each individual member of the Joint Venture shall provide a certificate of insurance which indicates that their individual practice insurance covers that individual member's participation in the Joint Venture.

ARTICLE 8 - SUSPENSION, REACTIVATION, DEFAULT, AND TERMINATION

8.1 SUSPENSION OF WORK

The System may, at any time, direct the Professional to suspend all services on the Project, or any part thereof, pending receipt of further notice from the System.

In all such cases the System and the Professional shall agree upon an appropriate phasing out of the services, or any part thereof, in such a manner that the services may be resumed with a minimum of added cost to the System, but in no event shall the services be continued beyond the completion of the current phase and/or tasks in progress. The Professional shall be

compensated for all services performed up to the effective date of suspension, and in accordance with the phasing-out plan.

8.2 PROVISION FOR SPECIAL CASES

If the Agreement so provides, by a reference to this paragraph, upon any suspension of services, or termination of services, the System and the Professional shall agree upon the amount to be reimbursed to the Professional to cover the costs, during any period of suspension, or incurred in effecting a termination, of any additional space specifically leased for the Project and of holding or terminating the employment of any group of employees specially hired for the Project. The Professional shall have given the System notice prior to leasing such space or hiring such personnel as a prerequisite to receiving additional compensation hereunder. The Professional shall use his best efforts to minimize all claims for additional compensation hereunder.

8.3 FORCE MAJEURE

Neither party will incur any liability to the other if its performance of any obligation under this Agreement is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but are not limited to: acts of God or war; changes in any controlling law, regulations, orders, or requirements of any governmental entity; severe weather conditions; civil disorders; natural disasters; fire; epidemics and quarantines; general strikes throughout the trade; and freight embargoes. The Professional shall notify the System orally within five (5) days and in writing within ten (10) days of the date on which the Professional becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall:

- a. describe fully such cause(s) and its effect on performance,
- b. state whether performance under the Agreement is prevented or delayed, and,
- c. if performance is delayed, state a reasonable estimate of the duration of the delay.

The Professional shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform, and shall produce such supporting documentation as the System may reasonably request. After receipt of such notification, the System may elect either to cancel the Agreement or to extend the time for performance as reasonably necessary to compensate for the delay.

In the event of a declared emergency by competent governmental authorities, the System may, by notice to the Professional, suspend all or a portion of the Agreement.

8.4 REACTIVATION OF PROJECT

Where services have been suspended or terminated for a time longer than five months, and are subsequently reactivated, the System and the Professional shall agree, prior to the beginning of the reactivated services, upon a lump sum, or other basis of reimbursement to the Professional for documentable and directly related extra startup costs as result of services having been suspended or terminated. If agreement as to the amount of reimbursement is not reached, the Professional shall proceed with the Project and seek adjustment under Article 9. If the Professional does not proceed within thirty (30) days from notice to proceed, the System may terminate the Agreement for material default.

8.5 TERMINATION FOR CONVENIENCE

The System has the right to terminate this Agreement by written notice for any of the reasons provided for under this Article, and for other cause as specified in this Agreement or by law. Termination shall be effective upon written notice to the Professional. The Professional shall comply with all reasonable instructions of the System, relating to such termination, including but not limited to: (i) delivery of drawings, reports, and other engineering data to the System,

(ii) discontinuance of services on outstanding contracts, and (iii) furnishing to the System information concerning all action to be taken respecting outstanding agreements with consultants, contracts, awards, orders, or other matters. Upon termination, the System shall own all reports and data developed as required by the Agreement. The Professional shall be paid for services satisfactorily completed prior to the effective date of the termination, but in no event shall the Professional be entitled to recover loss of profits, anticipated profits, lost opportunity, loss of use of money, or other similar costs.

8.6 TERMINATION FOR NON-APPROPRIATION

The System's obligation to make payments during any System fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (System, State, and/or Federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the System shall have the right to terminate the Agreement, or any Individual Work Order, for Convenience. The Professional shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this Agreement. Such reimbursement shall not include loss of profit, anticipated profits, lost opportunity, loss of use of money, administrative or overhead costs, or other similar costs. The reimbursement amount may be paid from any appropriations available for that purpose.

8.7 TERMINATION UPON DISABILITY OF PROFESSIONAL

In the event of the Professional's death, mental disability, physical disability, or inability to complete the Agreement for any other reason over which Professional has no control, including military mobilization and dissolution of the Professional firm, the System shall have the right to Terminate for Convenience and to select and employ a new professional to complete the services. If the termination is by reason of death or incapacity of the Professional, all payments due and owing shall be made to the Professional's personal representative. If the termination is by reason of the liquidation of a partnership or the dissolution of a corporation, payment shall be made to the liquidating partner or trustees, as the case may be.

8.8 TERMINATION FOR CAUSE

The System shall have the right to terminate the Agreement for Cause under Article 8.9, upon written notice to the Professional. If it is later determined through proper dispute and/or legal proceedings that the System erred in terminating the Agreement for Cause, the termination shall be deemed to be a Termination for Convenience under Article 8.5. The System will allow a 10-day cure period to correct the default or cause.

Under a Termination for Cause, continuing for the period specified in the written notice of such default and demand for cure, no further payments shall be made to the Professional until the System shall have engaged another Professional to complete the services. If another Professional is engaged, the cost to the System of the compensation and expenses of such other Professional shall be deducted from the remainder of the compensation otherwise payable to the Professional for completion of the services. Additionally, the System may deduct any reasonable and necessary administrative costs for re-procurement. Any shortage shall be recoverable by the System from the defaulting Professional.

8.9 DEFAULT

The System may, subject to the provisions of Article 8.3, and in addition to its other rights under the Agreement, declare the Professional in default by written notice to the Professional and terminate, subject to the provisions of Article 8, the whole or any part of this Agreement for any of the following reasons:

- a. Failure to begin services within the time specified in the Agreement;

- b. Failure to perform the services with sufficient labor, equipment, or material to ensure the completion of the specified services in accordance with the terms of the Agreement;
- c. Unsatisfactory performance of the services;
- d. Discontinuance of services without approval;
- e. Failure to resume services, which were discontinued, within a reasonable time after notice to do so;
- f. Insolvency or bankruptcy;
- g. Assignment made for the benefit of creditors;
- h. Failure or refusal within ten (10) days after written notice by the System, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
- i. Failure to protect, to repair, or to make good any damage or injury to property; or
- j. Breach of any material provision of this Agreement.

In the event that the System terminates this Agreement in whole or in part as provided for above, the System may procure, upon such terms and in such manner as it determines, services similar or identical to those so terminated, and the Professional shall be liable to the System for any reasonable excess costs for such similar or identical services included within the terminated part of the Agreement.

If the Agreement is terminated, the System may require the Professional to transfer title of partially completed services and deliver such immediately to the System in the manner and to the extent directed by the System, including, where applicable, reports, working papers, and other documentation, as the Professional has specifically produced or specifically acquired for the performance of such part of the Agreement as has been terminated.

Payment for completed services accepted by the System shall be at the agreement's price. Payment for partially completed services including, where applicable, reports and working papers delivered to and accepted by the System, shall be in an amount agreed upon by the Professional and System. The System may withhold from amounts otherwise due the Professional for such completed or partially completed services, such sum as the System determines to be necessary to protect the System against loss.

The rights and remedies of the System provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. The System's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the System of its rights and remedies in regard to the event of default or any succeeding event of default. Following reasonable and prudent efforts of the Professional's administrative remedies as set forth in this Agreement, the Professional's exclusive remedy shall be to seek damages at the Board of Claims.

ARTICLE 9 - DISPUTES

9.1 DISPUTES BETWEEN THE PROFESSIONAL AND THE SYSTEM

This Article applies to any dispute, disagreement, question, or other matter between the Professional and the System arising under or by virtue of this Agreement. Such matters shall be initiated as a written claim, meaning a written demand or assertion seeking, as a matter of right, interpretation of the Agreement terms, conditions, or requirements, or adjustment of the Agreement Sum and/or Agreement Time, or other relief with respect to the Agreement.

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

The Professional shall diligently carry on the services and maintain the progress schedule

during the Disputes process, including Board of Claims proceedings, if any, unless otherwise agreed to in writing by the Professional and the System.

At any step in the System's process, the Professional's failure to submit a timely written request for the next step shall constitute the Professional's waiver of the claim.

The Disputes processes in this Article, and claims introduced under them, shall survive Agreement termination.

9.2

PROCEDURES

Step 1, Project Manager's Determination

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

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

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

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

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

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

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

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

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

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 Professional's request for an Agency Claim Review, issue a written Agency Final Decision formulated by the Panel. The Decision will state the basis for the decision and inform the Professional of the right to administrative and judicial review. A copy of the Agency's Final Decision will be delivered to

the Professional 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 Professional.

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

9.3 ADMINISTRATIVE AND JUDICIAL REVIEW RIGHTS

The Board of Claims has the exclusive jurisdiction for claims under this Agreement, as provided in the Commonwealth Procurement Code (62 P.S. § 101, et seq.). If either the Professional 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.

9.4 DISPUTES BY THE SYSTEM AGAINST THE PROFESSIONAL

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

9.5 DISPUTES BETWEEN DIFFERENT CONTRACTORS OF THE SYSTEM

The System shall have no obligation to any third parties for any claim, nor be a party to any claims, disputes, or actions between different entities with which the System has contracted; nor shall such claims, disputes, or actions be subject to Board of Claims proceedings.

Disputes between different entities with which the System has contracted shall not delay completion of the services, which shall be continued by the parties, subject to the rights herein before provided. The intent of this clause is to benefit all entities working on the Project or related projects and to serve as an indication of the mutual intent of the System and the Professional that this clause raise such other entities to the status of third party beneficiaries only as to the terms and conditions of this Article.

ARTICLE 10 - MISCELLANEOUS PROVISIONS AND LEGAL MATTERS

10.1 NEWS RELEASES

News releases and media contacts regarding this Agreement will be made by the System only, unless the System directs otherwise in specific instances. In such instances, the System shall receive prior review and approval of such releases. In any case, the Professional shall not use the name of the System or any System university for promotional or marketing purposes without the System's prior written approval.

10.2 ASSIGNMENT

For the purposes of this Agreement, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Professional, provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.

The Professional shall not assign, in whole or in part, this Agreement or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the System, which

consent may be withheld at the sole and absolute discretion of the System.

Notwithstanding the foregoing, the Professional may, without the consent of the System, assign its rights to payment to be received under the Agreement, provided that the Professional provides written notice of such assignment to the System together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Agreement.

Also notwithstanding the foregoing, the Professional may, with consent of the System, which consent shall not be unreasonably withheld, assign its rights, duties, obligations, or responsibilities hereunder to the Professional's parent or affiliate, so long as such assignment is part of a merger, acquisition, or restructuring. Such assignment shall still be contingent upon all necessary Commonwealth approvals.

Any assignment consented to by the System shall be evidenced by a written assignment agreement executed by the Professional and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Agreement and to assume the duties, obligations, and responsibilities being assigned.

Subject to the terms and conditions of this Article, this Agreement shall be binding upon the parties and their respective successors and assigns.

A change of name by the Professional, following which the Professional's federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Professional shall give the System written notice of any such change of name.

10.3 APPLICABLE LAW

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

10.4 PROVISIONS REQUIRED BY PENNSYLVANIA LAW OR FEDERAL LAW TO BE INSERTED

Each and every provision required to be inserted in Professional Agreements by the laws of Pennsylvania, or the lawful regulations of any agency of the Commonwealth, and, if the Project involves the use of federal funds, by any law of the United States of America or the lawful regulations of any agency thereof applicable to the Agreement, shall be deemed to be inserted herein, and the Agreement shall be read, interpreted, and enforced as if such provisions were set forth therein in full. If desired by the System, or by any Commonwealth or Federal Officer having power to require the inclusion of provisions and terms in Professional Agreements, the Agreement may be forthwith physically amended to include such provisions over the signature of the Professional.

10.5 LEGISLATIVE AND POLICY UPDATES

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

10.6 ENVIRONMENTAL PROVISIONS

In the performance of the Agreement, the Professional shall minimize pollution from its own activities and shall strictly comply with all applicable environmental laws and regulations.

Unless otherwise provided for in this Agreement, the Professional shall have no responsibility for the discovery, handling, removal, or disposal of hazardous material or toxic substances at a Project site. Additionally, the Professional shall have no responsibility for exposure of persons to such hazardous materials or toxic substances at the Project site.

10.7 TAXES (EXCISE TAXES)

The System is exempt from all excise taxes imposed by the Internal Revenue Service. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas guzzler emergency vehicles, and sports fishing equipment. The System is also exempt from Pennsylvania state sales tax, local sales tax, public transportation assistance taxes and fees, and vehicle rental tax. The Pennsylvania Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this paragraph is meant to exempt a Professional from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental, or lease of tangible personal property or taxable services used or transferred in connection with the performance of this Agreement.

10.8 AUDIT PROVISIONS

The Professional agrees to maintain books, documents, and records which shall support the prices charged and costs incurred for the Agreement. The System shall have the right, at reasonable times and at a site designated by the System, to audit the books, documents, and records of the Professional to the extent that the books, documents, and records relate to costs or pricing data for the Agreement. The Professional shall give full and free access to such books, documents, and records to the System and/or their authorized representatives. The Professional shall preserve books, documents, and records that relate to costs or pricing data for the Agreement for three (3) years after final payment.

10.9 TAX LIABILITY AND OFFSET

The Professional, by execution of this Agreement, certifies that it has no outstanding tax liability to the Commonwealth of Pennsylvania; authorizes the Pennsylvania 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 Professional or any of its subsidiaries, as well as any other amount due to the Commonwealth from the Professional, not being contested on appeal by the Professional, against any payment due to the Professional under an agreement with the Commonwealth.

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 Professional knowingly rendered an erroneous certification, the System may find the Professional in default and terminate the Agreement. Such erroneous certification may also be grounds for initiation of civil or criminal proceedings.

10.10 ASSIGNMENT OF ANTITRUST CLAIMS

The Professional and the System recognize that in actual economic practice, overcharges by the Professional's suppliers resulting from violations of state or federal antitrust laws are in fact borne by the System. The Professional assigns to the System, as part of the consideration for the award of this Agreement and intending to be legally bound, all right, title and interest in and to any claims the Professional now has, or may acquire, under state or federal antitrust laws relating to the products and services which are the subject of this Agreement.

10.11 NO THIRD PARTY RIGHTS

Nothing in this Agreement, in these General Conditions, or in any other document incorporated herein by reference or issued hereunder, expressed or implied, is intended to or shall be construed to confer upon, or give to, any person, firm or corporation, or any governmental agency other than the System, its successors and assigns, and the Professional, any right, remedy, or claim, legal or equitable, whether as third party beneficiary or otherwise. This

Agreement and all provisions applicable hereto or incorporated herein are for the sole and exclusive benefit of the System, its successors and assigns, and the Professional.

10.12 HOLD HARMLESS

The Professional shall indemnify and hold harmless the System, and their agents and employees, from and against all third-party claims, damages, losses, and expenses, including reasonable attorneys' fees, to the extent arising out of or resulting from the performance of the Professional's services, 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, error, or omission of the Professional, any subconsultant, 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.

In any and all claims against the System, or against any of their agents or employees, by any employee or the Professional, any subconsultant, 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 Professional or any subconsultant under workmen's compensation acts, disability benefit acts, or other employee benefit acts.

The obligations of the Professional under this Article shall not extend to the liability of any other contractor, any other 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 representatives of the System, or their agents or employees, provided such giving, or failure to give, is the primary cause of the injury or damages.

10.13 AMERICANS WITH DISABILITIES ACT

The Professional understands and agrees that, pursuant to federal regulations promulgated under the authority of *The Americans With Disabilities Act*, 28 C.F.R. § 35.101 et seq., the Professional shall not cause any individual with a disability to be excluded from participation in this Agreement or from activities provided for under this Agreement on the basis of the disability.

The Professional agrees, as a condition of accepting this Agreement, 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 all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside Professionals.

The Professional shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Professional's failure to comply with Article 10.13.

10.14 NONDISCRIMINATION/SEXUAL HARASSMENT

The Professional agrees in the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the Agreement or any subcontract, the Professional, each subconsultant, or any person acting on behalf of the Professional or subconsultant shall not discriminate in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

Neither the Professional nor any subconsultant nor any person on their behalf shall in any manner discriminate in violation of the PHRA and applicable federal laws against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the Agreement.

The Professional and each subconsultant shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.

The Professional and each subconsultant shall not discriminate in violation of PHRA and applicable federal laws against any subcontractor or supplier who is qualified to perform the work to which the Agreement relates.

The Professional and each subconsultant represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws and regulations relating to nondiscrimination and sexual harassment.

The Professional and each subconsultant further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Professional and each subconsultant shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the Commonwealth for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

The Professional shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subconsultant will be binding upon each subconsultant.

The Professional's and each subconsultant's obligations pursuant to these provisions are ongoing from and after the effective date of the Agreement through the termination date thereof. Accordingly, the Professional and each subconsultant shall have an obligation to inform the Commonwealth if, at any time during the term of the Agreement, it becomes aware of any actions or occurrences that would result in violation of these provisions.

The Commonwealth 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. In addition, the System may proceed with debarment or suspension and may place the Professional in the Contractor Responsibility File.

10.15 PROFESSIONAL RESPONSIBILITY PROVISIONS

The Professional certifies, for itself and all its subconsultants, that as of the date of its execution of this Agreement, that neither the Professional, nor any subcontractors, nor any suppliers, are under suspension or debarment by the System or any governmental entity, instrumentality, or authority and, if the Professional cannot so certify, then it agrees to submit a written explanation of why such certification cannot be made.

The Professional also certifies, that as of the date of its execution of this Agreement, it has no tax liabilities or other Commonwealth obligations.

The Professional's obligations pursuant to these provisions are ongoing from and after the effective date of the Agreement through the termination date thereof. Accordingly, the Professional shall have an obligation to inform the System if, at any time during the term of the Agreement, it becomes delinquent in the payment of taxes or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the System, the federal government, or any other state or governmental entity. Such notification shall be made within fifteen (15) days of the date of suspension or debarment.

The failure of the Professional to notify the System of its suspension or debarment by the System, the federal government, or any other state or government entity shall constitute an event of default of the Agreement with the System.

The Professional agrees to reimburse the System for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Professional's compliance with the terms of this, or any other agreement between the Professional and the System, which results in the suspension or debarment of the Professional. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Professional shall not be responsible for investigative costs for investigations that do not result in the Professional's suspension or debarment.

The Professional may obtain a current list of suspended and debarred Commonwealth Professionals by contacting the Department of General Services, Office of Chief Counsel, 603 North Office Building, Harrisburg, PA 17125, phone: 717-783-6472.

10.16 DEBARMENT OR SUSPENSION

The Contracting Officer shall recommend debarment or suspension action against the Professional whenever there is substantial evidence that a cause for debarment or suspension under the provisions of the Commonwealth Procurement Code (62 Pa.C.S. §101 *et seq.*) and the provisions of this Agreement have occurred. The Professional shall be notified of such action and given reasonable opportunity to be heard by the agency's head or designee. The agency head shall determine debarment or suspension actions appropriate for the offense in accordance with the provisions of the Commonwealth Procurement Code (62 Pa.C.S. §101 *et seq.*).

10.17 PROFESSIONAL'S COVENANT AGAINST CONTINGENT FEES

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

10.18 CONTRACTOR INTEGRITY

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

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

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

a common proprietor or general partner.

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

c. "Professional" means the individual or entity that has entered into this Agreement with the Commonwealth.

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

e. "Financial Interest" means either:

(1) Ownership of more than a five percent interest in any business; or

(2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

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

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

In furtherance of this policy, the Professional agrees to the following:

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

b. The Professional shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Professional's activity with the Commonwealth and Commonwealth employees and which is made known to all Professional employees. Posting these Contractor Integrity provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.

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

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

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

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

- (2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
- (3) had any business license or professional license suspended or revoked;
- (4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation, or anti-trust; and
- (5) been, and is not currently, the subject of a criminal investigation by any federal, state, or local prosecuting or investigative agency, and/or civil anti-trust investigation by any federal, state, or local prosecuting or investigative agency.

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

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

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

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

e. The Professional shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Professional non-compliance with these Contractor Integrity provisions. The Professional agrees to make identified Professional employees available for interviews at reasonable times and places. The Professional, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to the Professional's integrity and compliance with these provisions. Such information may include, but shall not be limited to, the Professional's business or financial records, documents, or files of any type or form that refer to or concern this Agreement. The Professional shall

incorporate this paragraph in any agreement, contract, or subcontract it enters into in the course of the performance of this Agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third-party beneficiaries shall be created thereby.

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

10.19 RIGHT TO KNOW LAW

Unless otherwise determined by a Pennsylvania appellate court subsequent to the execution of this Agreement, the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104 ("RTKL"), applies to this Agreement.

Unless the Professional provides the System, in writing, with the name and contact information of another person, the System shall notify the Professional if the System needs the Professional's assistance in connection with a request made under the RTKL. The Professional shall notify the System in writing of any change in the name or the contact information within a reasonable time prior to the change.

Upon notification to the Professional that the System has received a request for the Professional's records under the RTKL (the "Requested Information"), the Professional agrees to assist the System in responding to the request. Such assistance shall include providing the System, within three (3) days, with copies of any Requested Information in the Professional's possession that the Professional deems a Public Record, as that term is defined in the RTKL, or otherwise notify the System that the Requested Information is not a Public Record. If the Professional is unable to provide the Requested Information within three (3) days for one of the reasons specified in the RTKL, the Professional agrees to timely notify the System that it will need up to an additional twenty-five (25) days, and must provide in writing the reason the additional time is needed. If the Professional makes a determination the Requested Information is within the scope of the RTKL but fails to provide the Requested Information to the System within the period specified in this provision, the failure shall be considered an event of default and the Professional shall pay, indemnify, and hold the System harmless for any damages, penalties, detriment, or harm that the System may incur as a result of the Professional's failure.

The Professional's determination as to whether the Requested Information is a Public Record is dispositive of the question as between the parties. The Professional agrees to provide information and/or to appear before the Office of Open Records or Pennsylvania Courts in support of the System's denial of access to a record the Professional determined was not a Public Record. The Professional agrees to indemnify the System for any court costs, attorneys' fees, or civil penalties awarded against the System under the RTKL in connection with the Professional's denial of access to Requested Information.

If in the course of this Agreement, the System is provided with information the Professional clearly identifies as a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, the System agrees to abide by the terms of Section 707 of the RTKL and timely provide the Professional with notice of a request for this information and allow the Professional the ability to respond, as provided by the RTKL. The Professional reserves all rights and remedies as allowed by law relating to the System's unauthorized disclosure of the Professional's Trade Secret or Confidential Proprietary Information. This provision shall not be construed to limit the sovereign immunity of the System.

The System will reimburse the Professional for any costs associated with complying with this provision only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

The Professional agrees to abide by any decision to release a record to the public made by the Office of Open Records after timely appeal to the Pennsylvania Courts.