ARTICLE 1
GENERAL CONDITIONS

1.1 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

1.1.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

1.1.2 Notwithstanding any provision to the contrary in any of the following documents, precedence is established by order of the following documents: (1) the Agreement; (2) Addenda (those of a later date having precedence over those with an earlier date); (3) the General Conditions; (4) Division 1 (General Requirements) of the Specifications (other than the General Conditions); and (5) Drawings and Divisions 2-48 of the Specifications. In the event of conflicting or inconsistent provisions between any of the foregoing documents, a document identified with a lower numerical value shall supersede a document identified with a higher numerical value to the extent necessary to resolve any such conflict or inconsistency.

In case of an inconsistency or discrepancy between Drawings and Divisions 2-48 of the Specifications or within either Document, not clarified by Addenda, Contractor is deemed to provide the better quality or the greater quantity of the Work.

1.1.3 Repeated features throughout must be constructed alike, although drawn in detail only once and, similarly, all detail and ornament must be continued throughout all moldings, bands, etc., and all indications of material, etc., shall apply to all similar features throughout.

1.1.4 For Work specified to be done "as directed," Contractor must obtain written direction from Owner's Representative before undertaking such work.

1.1.5 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings, shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. The Contractor is solely responsible for coordination of bidding and scope of Work of subcontractors and shall assume full responsibility for complete coordination of subcontractors. Owner and/or Architect will not act as arbiter as to which trade or subcontractor is to furnish and install various items indicated or is required to perform construction.

1.1.6 **References**

1.1.6.1 All laws, ordinances, rules, regulations and orders of any public authority, all standard specifications, manuals and codes, and all manufacturer's specifications, directions, recommendations and publications referred to for the performance of the Work or for the establishment of construction, materials, or equipment standards, whether or not specifically made a part of or incorporated by reference in the Contract Documents, shall be and include the latest revisions or editions thereof in effect on the date of the Contract Specifications, or as to Change Orders, on the date of the Change Order.

1.1.6.2 All references to the "manufacturer's specifications," "manufacturer's directions" or "manufacturer's recommendations" shall refer to the referenced manufacturer's published specifications or manuals. These publications hereby are made a part of and incorporated by this reference in the Contract Specifications as though repeated therein in full, and all manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned accordingly, unless specified to the contrary.

1.1.6.3 No provision or term of any referenced standard specification, manual, or code, or

manufacturer's specification, direction, recommendation, or publication, whether or not specifically made a part of or incorporated by reference in the Contract Documents, shall be effective to change the duties and responsibilities of the Owner or Architect, or any of their consultants, agents, or employees from those set forth in the Contract Documents or Owner-Architect Agreement, nor shall such provision or term be effective to assign to Architect or any of Architect's consultants, agents, or employees, any duty, responsibility, or authority to supervise, direct, or control the furnishing or performance of the Work or any duty, responsibility, or authority to undertake any duty or responsibility contrary to the provisions of the Contract Documents or Owner-Architect Agreement.

1.1.6.4 Wherever an article, device or piece of equipment is referred to in the singular, such reference shall apply to as many such articles as are shown on the Contract Documents or are required to complete the installation.

1.2 INTERPRETATION

1.2.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.2.2 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.2.1 In the interest of conciseness, references to specification sections and details are preceded by the word "see." Any such references are to be interpreted to include applicable form of the phrase "and comply with."

1.2.2.2 In the interest of conciseness, certain sentences, statements, and clauses omit any form of the verb "shall" normally expressed in verb phrase with verbs such as "furnish," "install," "provide," "perform," "construct," "erect," "comply," "apply," "submit," etc. Any such sentences, statements, and clauses shall be interpreted to include the applicable form of the phrase "the Contractor shall," and requirements described therein shall be interpreted as mandatory elements of the Contract.

1.2.3 Should Contractor perceive an ambiguity in the Contract Documents, Contractor shall request an interpretation from Owner before proceeding. If Contractor fails to make such a request, failure to perform with respect to the alleged ambiguity shall not be excused.

1.3 EXECUTION OF CONTRACT DOCUMENTS

1.3.1 The Contract Documents shall be signed by authorized representatives of the Owner and Contractor.

1.3.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

1.4 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

1.4.1 The Drawings, Specifications, and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by the Architect or the Architect's consultants. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect and Owner, on request, upon completion of the Work.

1.4.2 The Drawings, Specifications, and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to the Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor, or material or equipment supplier on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants, if any.

1.4.3 The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications, and other documents prepared for the Project. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the copyright owner's copyrights or other reserved rights.

ARTICLE 2
OWNER

2.1 GENERAL. The Owner's Representative will be designated at the start of the Project.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 Any other provision of the Contract Documents to the contrary notwithstanding, it is expressly understood and agreed that the legal obligation of the Owner to pay the Contract Sum or any part thereof shall be contingent upon the availability of funds appropriated by the Legislature of the State of Nebraska as provided by law, or the availability of other funds of the Owner specifically approved by formal action of the Board of Regents for the purpose of payment of the Contract Sum or any part thereof.

2.2.2 Except for permits and fees, including those required under Section 3.7.1, which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments, and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

2.2.3 To the extent Owner deems necessary, Owner may furnish surveys describing physical characteristics, legal limitations, subsurface and geotechnical information, and utility locations for the site of the Project, and a legal description of the site. Information will be furnished only to the extent it is readily available to or can reasonably be determined by Owner. The Contractor shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Notwithstanding the foregoing, if Contractor permits any construction activity to be performed that involves an error, inconsistency or omission in the Contract Documents or a physical condition at the site it recognized or, employing the degree of diligence required of it under the Contract Documents should have recognized without having given notice to the Owner and having received no authorization to proceed, the Contractor shall assume responsibility for such performance and bear all costs attributable to correction without recovery.

2.2.4 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

2.3 OWNER'S RIGHT TO STOP THE WORK

2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the

Contract Documents as required by Section 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

2.3.2 Owner may declare Contractor in default for any one or more of following conditions or reasons**:**

2.3.2.1 Failure to complete the Work within Contract Time or any extension thereof.

2.3.2.2 Failure or refusal to comply with order of Architect or Owner's Representative within reasonable time.

2.3.2.3 Failure or refusal to remove rejected materials.

2.3.2.4 Failure or refusal to perform anew any defective or unacceptable Work.

2.3.2.5 Bankruptcy or insolvency, or making of any assignment for benefits of creditors.

2.3.2.6 Failure to provide qualified supervisors, competent workers or subcontractors to carry on the Work in an acceptable manner.

2.3.2.7 Failure to execute the Work according to agreed schedule of completion.

2.3.2.8 Disregard or violation of any provisions of Contract Documents.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

2.4.2 Neither Owner nor its officers, agents, or employees are in any way liable or accountable to Contractor or its surety for the method by which completion of said Work, or any portion thereof, is accomplished or for price paid therefor. Contractor and surety are responsible for all costs for completion of the Work including cost in excess of original Contract Sum. Owner does not forfeit the right to recover damages from Contractor or surety for failure to complete the Contract by taking over the Work or by declaring Contract or Contractor in default. Maintenance of the Work remains Contractor's and surety's responsibility as provided for in Owner’s protective bond and guarantee of Contractor.

ARTICLE 3
CONTRACTOR

3.1 GENERAL

3.1.1 The Contractor shall perform the Work in accordance with the Contract Documents.

3.1.2 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect or Owner in the Architect's or Owner’s administration of the Contract, or by tests, inspections, or approvals required or performed

by persons other than the Contractor.

3.1.3 Contractor and its Subcontractors shall use a federal immigration verification system to determine the work eligibility status of any new employee physically performing services within the State of Nebraska, as required pursuant to Neb. Rev. Stat. §§ 4-108 to 4-114. Compliance with these Nebraska statutes shall be considered a material term of this Contract.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. The Contractor is responsible for recognizing such errors, inconsistencies, or omissions and requesting clarification thereof and is responsible for consequences of failing to conduct a careful examination of the site as described herein. Any errors, inconsistencies, or omissions discovered by the Contractor shall be reported promptly to the Architect and Owner as a request for information in such form as the Architect or Owner may require.

3.2.2 Any design errors or omissions noted by the Contractor during its review shall be reported promptly to the Architect and Owner, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor shall not proceed with the Work affected by a reported error, omission, or inconsistency without receiving clarification or instruction from the Owner. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Owner and Architect.

3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Sections 4.3.5 and 4.3.6. If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Owner and Architect.

3.2.4 By entering into the Contract with Owner, Contractor acknowledges that the Contractor has examined all the Contract Documents and other documents pertaining to the Work, examined the character of the site and any existing structures, and is well acquainted with the nature of the Work and with all other matters which can in any way affect the Work.

3.2.5 The Contractor may use soil information described in bidding documents at the Contractor's own risk. Any additional soil information necessary to perform the Work is the responsibility of the Contractor and is to be obtained at the Contractor's expense.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques,

sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences, or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Owner. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences, or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.

3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors, and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

3.3.4 For equipment furnished by Owner and/or by others and to be installed by Contractor, the Contractor shall use manufacturer's current detail drawings, as approved and provided by Owner, to establish roughing-in dimensions, size of, and location of service. In case of conflict, the equipment detail drawings and dimensions shall be used, except where aesthetic or structural considerations make an adjustment necessary**.**

3.4 LABOR AND MATERIALS

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor shall coordinate and discuss its utility needs with the Owner. The Contractor shall verify the location of the nearest utilities services and use those services most efficient to the completion of the Work. See General Requirements for additional provisions regarding any Owner-furnished utilities.

3.4.2 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect, and in accordance with a Change Order.

3.4.2.1 It is the intent of the drawings and specifications to secure competition consistent with the level of quality and performance desired by the Owner and set out in these documents.

3.4.2.2 When the drawings and/or specifications refer to any item, article, material, method, fabrication, assembly, or construction by means of one or more manufacturer's trade name, catalog reference or similar means of identification, or manufacturer, the Contractor shall furnish one of the makes so identified without substitution unless other make or makes have been approved by Addendum to the Contract Documents prior to the receipt of bids. Requests for the approval of items of equal quality should be made in writing to the Architect ten days prior to the date of the receipt of bids so that a list of acceptable equal quality items can be made known to all bidders by an addendum. If substitutions for named items, articles, materials, methods, fabrications, assembly or construction are approved, the Contractor assumes all responsibility for coordination and performing the related changes in the Work necessitated by such substitutions and shall include in its bid all costs involved therein.

3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.4.4 **University Policy Prohibiting Discrimination including Sexual Harassment**.

3.4.4.1 State and federal law, as well as University of Nebraska Bylaws, policies, and guidelines prohibit discrimination (as defined therein) including harassment and retaliation, against students, employees, and other members of University community. Prohibited types of discrimination include discrimination on the basis of race, color, ethnicity, national origin, sex (including sexual harassment), pregnancy, sexual orientation, gender identity, religion, disability, age, genetic information, veteran status, marital status, political affiliation, and any other protected status. Sexual harassment includes: unwelcome sexual advance toward a University employee or student, request for a sexual favor, and other verbal or physical conduct of a sexual nature that is so pervasive as to create a hostile or offensive working environment for University employees or a hostile or offensive academic environment for University students.

3.4.4.2 The Contractor shall exercise control over itself, its employees, agents, contractors, and affiliated parties to prohibit acts of discrimination, including sexual harassment, against University students, employees, and other members of the University community. The Contractor shall cooperate with the Owner following any report of discrimination. In the event the Owner determines that the Contractor or an employee, agent, contractor, or other person affiliated with the Contractor has engaged in discrimination, including harassment, or other inappropriate conduct, the Contractor will take prompt and effective action, in accordance with the Owner's direction, to prevent recurrence of the conduct and to correct its effects, which may include removal of the Contractor or the employee, agent, contractor, or other person affiliated with the Contractor from performing the Work. The Contractor's failure to comply with the Owner's directive or any other part of this provision may be cause for immediate termination of the Contract. The Contractor acknowledges that the Owner may have obligations to report any allegations or incidents of discrimination, including sexual harassment. The Contractor and employees, agents, contractors, and other persons affiliated with the Contractor who are directly performing the Work or present on University premises shall participate in any training as may be required by the Owner from time to time, including training regarding sexual harassment.

3.4.5 **Contractor's Drug Free Workplace Policy**. Contractor certifies that as a condition of the Contract that neither Contractor nor any employee of Contractor shall engage in unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance including alcohol or alcoholic beverages, in conducting any activity covered by the Contract. The Owner reserves the right to request and receive a copy of the Contractor's drug free workplace policy. Contractor further agrees to insert a provision similar to this statement in all subcontracts for services required under the Contract.

3.4.6 **Property Rules and Regulations; Tobacco Use**. Employees of Contractor and any subcontractors shall comply with all Owner rules and regulations pertaining to conduct on Owner's property. Owner reserves the right to request the removal or replacement of any Contractor, subcontractor, or supplier employee who fails to comply with such rules and regulations. The Owner's property is tobacco-free. Use of tobacco products is not permitted on Owner's property. Contractor and any other subcontractor are expected to respect this tobacco-free policy and fully comply with it.

3.4.7 **Employees under Work Release**. The Contractor shall give written notice to the Owner's Representative of Contractor's intent to employ any employee on the Project site that is on a department of correctional services work release program. This notice shall be given prior to that employee being on the Project site.

3.4.8 **Criminal Background Investigations**. Notwithstanding the provisions of Section 3.4.7, the Contractor represents and warrants that the Contractor has obtained, at its own expense and in a manner compliant with all applicable laws, a background screening for all of its employees who will be present on University premises. Such background screenings shall be completed consistent with current industry standards and shall, at a minimum, include the same degree of thoroughness as the background checks the Owner conducts for its newly hired staff. the Contractor shall update any

background screening upon reasonable request by the Owner and any request based upon the occurrence of any illegal activity involving the Contractor or its personnel, or the reasonable suspicion of illegal activity shall be deemed reasonable. The Contractor shall provide the Owner with evidence of the completion of the required background screenings upon the Owner's request. The Contractor shall not hire, retain, or engage any individual directly involved in the performance of the Work who has been convicted (felony or misdemeanor) of or entered into a court-supervised diversion program for any sexual offense, felony assault (including domestic violence related incidents), child abuse, molestation or other crime involving endangerment of a minor, murder, or kidnapping. The Contractor and the Contractor's employees or agents directly performing the Work cannot be listed on any sex offender registry. Other convictions, such as misdemeanor assault, drug distribution activity, felony drug possession, and any other felony or crime involving moral turpitude may also render the Contractor and the Contractor's employees or agents ineligible to directly the Work, taking into consideration (1) the nature and gravity of the offense(s), (2) the time that has passed since the offense or conduct and/or completion of the sentence, and (3) the nature of the work being performed. The Contractor and the Contractor's employees or agents cannot be listed on any sex offender registry. The Contractor shall ensure any third party with whom the Contractor engages to provide any part of the Work shall comply with the same restrictions, conditions, and requirements of this section in the same capacity as the Contractor.

3.4.9 **Weapons Policy**. Possession of dangerous weapons (concealed or unconcealed) on Owner's property, on the work site, in the Owner's vehicles, or in personal vehicles when on the Owner's property shall be a violation of Owner's policy. (A dangerous weapon shall include guns, knives, explosives, or any other device as determined by Owner, which in the manner used or intended is capable of producing death or bodily injury. Devices authorized by the vice president for business and finance or relevant vice chancellor for business and finance and/or provided to employees for the purpose of carrying out work responsibilities shall not be deemed dangerous weapons for the purpose of this policy.) Violations of this policy shall make the offender subject to appropriate disciplinary action. Should the Owner in its reasonable judgment, determine that Contractor, or its employee or agent, has committed an act in violation of this policy, the Contractor agrees as a term and condition of the Contract, to cause such person and weapon, to be removed from the project site, and from the Owner's premises, and to take such other action as may be reasonably necessary, to ensure compliance with this weapons policy.

3.4.10 **Delivery; F.O.B.; Shipping.** Contractor shall bear all costs of transportation, packing, crating, delivery, installation, storage, and service under warranty for any goods or related services, delivered pursuant to the Contract. Contractor shall be responsible for and make delivery, including costs of delivery, cartage, temporary storage, off-loading costs, and insurance, F.O.B. destination: University of Nebraska. Unless otherwise specified, all shipments will utilize the best commercial practice to insure safe arrival at the Owner's delivery point.

3.4.11 **Quantity**. With respect to quantity of any good purchased under the Contract, Owner need not accept any variation in quantity except as specified in the Contract Documents. Over-shipments may be returned to Contractor at its expense, which shall include a reasonable cost for Owner handling, or be retained by Owner at no increase in price.

3.4.12 **Inspection**. Owner may, at any time in the course of the Contract, inspect and test materials and supplies being used in the performance of the Contract, including at the point of manufacture. If inspection and tests are made on Contractor's premises, Contractor without additional charge, shall provide reasonable facilities and assistance for the safety and convenience of the testing/inspection personnel. Except as otherwise agreed in writing, all goods, equipment and supplies furnished under the Contract shall be subject to final inspection and acceptance by Owner at the delivery destination.

3.4.13 **Defective Goods or Work**. Owner, notwithstanding any prior acceptance, at its option, may reject or require prompt correction (in place or elsewhere) of any goods, equipment, supplies, or other work, which are defective in material or workmanship or otherwise fail to meet the requirements of the Contract. All supplies furnished under the Contract shall be subject to inspection at F.O.B. destination, and Contractor shall be given notice of any defects, other than latent defects, within a

reasonable time after receipt of the goods, equipment, and supplies, along with all records of delivery. Owner may, in addition to any rights it may have by law, prepare for shipment and ship the defective goods, equipment, and supplies to Contractor, require Contractor to remove them, or direct a correction in place. The expense of any such remedy shall be borne by Contractor, including any excess cost.

3.4.14 **Liens**. Contractor warrants that it has title to any goods delivered under the Contract and shall deliver same free of all liens, claims, and encumbrances.

3.4.15 **Recycling Policy**. When purchasing products, materials, or supplies for use, Owner, when making such purchases shall actively pursue the purchase of products, materials, or supplies which are manufactured or produced with at least 10% post-consumer recycled materials. This policy shall not operate when it would result in the purchase of products, materials, or supplies that are of inadequate quality, not readily available or substantially higher in cost. It is the intent of Owner to continually increase the percentage produced from post-consumer recycled material, and, to increase each year the types and variety of products, materials, or supplies purchased with post-consumer recycled material.

3.4.16 **Contractor Identification**. Contractor shall cause each of its employees or any person acting on behalf of the Contractor, while providing goods/services to Owner under the Contract and working on Owner's property, to carry identification, with photo, showing that the individual is an employee or person acting on behalf of the Contractor. A badge worn outside of clothing is appropriate for this purpose. Such identification shall be produced upon request of any Owner representative, in order to confirm that the Contractor's representative is authorized to be present on Owner's property and/or performing as authorized by the Contract. Whereas campus security is of utmost importance, failure of any Contractor representative to produce the requisite identification upon request, shall be a material breach of the Contract and shall be cause, at the discretion of Owner, for immediate termination of the Contract. For those who commonly wear a work uniform, such uniform shall be worn while providing the services related to the Contract in order that Owner may quickly and clearly identify Contractor's service representatives when necessary. A uniform, however, does not take the place of a photo identification badge.

3.5 WARRANTY. The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Warranties and guarantees of equipment suppliers will be assigned directly to the Owner at the end of the general warranty periods concluding one year from the date of Substantial Completion.

3.6 TAXES

3.6.1 Sales and use taxes on tangible personal property to be incorporated into the Project are to be excluded under the following procedure: The Owner will appoint the Contractor as a purchasing agent for the Owner. Such appointment will authorize the Contractor and its Subcontractors to issue exempt sales certificates to the vendors when purchasing tangible personal property to be incorporated into the Project.

3.6.2 Owner shall furnish Contractor with a purchasing agent appointment and Exempt Sale Certificate Form for items incorporated into the Work considered by State of Nebraska to be exempt from sales tax following the execution of the Contract. Contractor is responsible for monitoring valid dates and notifying Owner if an extension is necessary. (Ref. Neb. Rev. Stat. § 77-2704.15). This appointment and exempt sales certificate does not apply to:

3.6.2.1 Purchase of materials to be used but not incorporated into the Work, including but not limited to form lumber, scaffolding, etc.

3.6.2.2 Purchase or rental of machinery, equipment, or tools owned or leased by Contractor, or Subcontractors and used in performing the Work.

3.7 PERMITS, FEES AND NOTICES

3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded. Whereas, the Owner is an agency of the State of Nebraska, certain fees, licenses and permits may not be required. Therefore, the Contractor should coordinate securing any permits or licenses with the Owner prior to obtaining such the same. For additional requirements see the General Requirements.

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

3.8 ALLOWANCES

3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

3.8.2.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

3.8.2.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;

3.8.2.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to minimize delay in the Work.

3.9 QUALIFIED SUPERVISOR

3.9.1 The Contractor shall employ a competent and qualified supervisor and necessary assistants who shall be in attendance at the Project site during performance of the Work. The supervisor shall represent the Contractor, and communications given to the supervisor shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

3.10.2 The Contractor shall prepare and keep current, for the Owner's and Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

3.10.4 See the General Requirements for the Project schedule.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders, and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be available to the Architect and Owner and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.12.1 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect without action.

3.12.2 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

3.12.3 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements, and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.12.4 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the Architect.

3.12.5 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given with consent of the Owner written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

3.12.6 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice the Architect's approval of a resubmission shall not apply to such revisions.

3.12.7 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.7, the Architect will review, approve, or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

3.13 USE OF SITE

3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

3.13.2 Contractor shall provide adequate protection throughout the course of the Work for all trees and shrubs on the site indicated in Contract Documents not to be removed. Contractor shall be responsible for damage to any such trees or shrubs during the period of construction and shall replace or repair any trees or shrubs damaged by Contractor, its subcontractors or employees, with plantings acceptable to Owner at no cost to Owner. Damaged sod areas shall be replaced with top grade sod of a type acceptable to Owner. All landscape repairs shall carry a one-year full guarantee.

3.13.3 Contractor shall enforce Owner's instructions regarding smoking, noise, signs, advertisements, and fires.

3.13.4 Contractor shall keep the site of construction reasonably free from weeds during the course of construction. Contractor shall cut all weeds on the site so as to discourage further germination.

3.13.5 All utilities, curbs, drives, pavements, streets, buildings, railings, guardrails, improvements, mechanical and electrical equipment, etc., which are damaged or cut during construction and are to be used after construction shall be repaired such that the quality of repaired item equals or exceeds its condition prior to construction.

3.13.6 See the General Requirements for continued occupancy of existing facilities.

3.13.7 Notwithstanding the foregoing, to the extent that the Contract requires Contractor or its employees or agents to be present on or within Owner's properties, then Contractor shall limit its presence and activities to such areas as are reasonably necessary in order to perform under the Contract. The Contractor shall take such precautions as are required to avoid damage to buildings, facilities, utilities, ground resources, trees and landscape amenities, and other properties adjacent to Contractor's activities within the scope of the Contract and agrees to be responsible and/or carry out any repairs for which it is liable, as a result of its performance under the Contract.

3.13.8 Owner shall not be responsible for providing parking for Contractor's parking needs. Contractor and/or its employees and agents will be solely responsible for any fines resulting from parking violations occurring on Owner's property. To obtain information regarding parking and to obtain permits, it is recommended that Contractor and any temporary employees contact the relevant parking office at:

UNL: 625 Stadium Drive, Suite A, Lincoln, NE 68588, (402) 472-1800
UNMC: 4230 Leavenworth Street, Annex 10, Room 3037, Omaha, NE 68105
UNO: 1313 S. 67th Street, Omaha, NE 68182, (402) 554-7275
UNK: 2501 19th Avenue, Kearney, NE 68849, (308) 865-8367

3.14 CUTTING AND PATCHING

3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.15 CLEANING UP

3.15.1 The Contractor shall keep the site and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project site waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials.

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so, and the cost thereof shall be charged to the Contractor.

3.16 ACCESS TO WORK. The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

3.17 ROYALTIES, PATENTS AND COPYRIGHTS. The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyright, patent, trademark, or other intellectual

property rights of any third party by Contractor or its employees, Subcontractors, consultants, representatives, and agents and shall indemnify and hold harmless the Owner and its respective officers, agents and employees and Architect for loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

3.18 INDEMNIFICATION

3.18.1 To the fullest extent permitted by law and to the extent claims, damages, losses, or expenses are not covered by insurance purchased by the Contractor in accordance with Article 11, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against any and all claims, damages, losses, liabilities, and expenses, including but not limited to costs, expenses, and attorneys' fees in connection therewith, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, liability, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

3.18.3 Contractor agrees to indemnify and hold Owner, Architect, Architect's consultants and agents and employees of any of them harmless from any and all loss or damages arising out of labor disputes between organized local labor units, whether or not of the same trade or craft, or other labor concerns of any kind that may occur during performance of the Contract, to the fullest extent permitted by law.

ARTICLE 4
ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 When Contractor is required to contact, notify, or otherwise interact with the Architect, Contractor shall contact the Owner's Representative first, and shall request instructions from Owner's Representative as to when and how the Architect should also be contacted.

4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner and Architect. Consent shall not be unreasonably withheld.

4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new architect.

4.1.4 Architect shall not be liable to Contractor for any claim or cause of action arising out of Architect's responsibilities under Contract, either personally or as an official of Owner, it being understood that in such matters Architect acts as agent and representative of Owner.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 Owner will provide administration of the Contract as described in the Contract Documents during construction and until final payment is due. Owner will advise and consult with Architect.

4.2.2 A registered architect and/or registered engineer representing the Architect shall make no less than one visit to the Project site with the Owner's Representative each month during progress of construction, or as directed by Owner, at a time mutually agreed upon between the Owner's Representative and the Architect. On the basis of on-site observations, the Architect shall endeavor to guard the Owner against defects and deficiencies in the Work and shall assist the Owner in obtaining faithful performance of Contract Documents by the Contractor.

4.2.3 The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

4.2.4 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the Contractor shall endeavor to communicate with Owner about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

4.2.5 The Architect shall not determine amounts owing to the Contractor and shall not issue Certificates for Payment.

4.2.6 The Architect shall advise the Owner in matters relating to rejection of Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable to ensure proper implementation of the intent of the Contract Documents, the Architect will advise the Owner to require additional or special inspection or testing of the Work in accordance with the provisions of the Contract Documents whether or not such Work is fabricated, installed, or completed.

4.2.7 The Architect and the Owner will concurrently review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Approval or other appropriate action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. Review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. Review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect and the Owner, of any construction means, methods, techniques, sequences or procedures. Approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.8 With the consent of the Owner, the Architect shall prepare data for Change Orders and Construction Change Directives as required by the Owner.

4.2.9 The Architect shall assist the Owner in determining the dates of Substantial Completion and final completion. The Architect will receive and review for completeness written warranties and related documents required by the Contract and assembled by the Contractor. After review of the required documents, the Architect will forward them to Owner for Owner's review and records. The Architect will assist the Owner in preparation of a Certificate of Substantial Completion upon compliance with the requirements of the Contract Documents. The Architect shall assist the Owner and Contractor in the preparation of a "punch list" to be attached to the Certificate of Substantial Completion.

4.2.10 Owner will provide one or more Owner Representatives at the Project site who will furnish construction observation services.

4.2.11 The Architect will interpret matters concerning performance, under and requirements of, the Contract Documents on written request of the Owner. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

4.2.12 Interpretations of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.

4.2.13 The Architect's interpretations on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

4.2.14 Architect shall advise and consult with the Owner during the Construction Administration Phase. Architect shall have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by Owner in writing.

4.3 CLAIMS AND DISPUTES

4.3.1 A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

4.3.2 Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the other party.

4.3.3 Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Section 9.5 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.3.4 If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. If requested by the Owner, the Architect will promptly investigate such conditions and advise Owner as to whether they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work. If the Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner shall so notify the Contractor in writing, stating the reasons. Claims in opposition to such determination must be made within 21 days after the Owner has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be subject to further proceedings pursuant to Section 4.4.

4.3.5 **Claims for Additional Cost**

4.3.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.6.

4.3.5.2 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) an order for a change in the Work issued by the Architect or Owner, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, a Claim shall be filed in accordance with this Section 4.3.

4.3.5.3 Any claims for additional cost will be allowed only if the labor, materials, and equipment and the work related thereto have been ordered in writing by the Owner. Claims for such additional cost must be approved by the Owner before payment is made.

4.3.6 **Claims for Additional Time**

4.3.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

4.3.6.2 If adverse weather conditions are allowed by contract as the basis for a Claim for additional time, then such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had a material adverse effect on the scheduled construction.

4.3.6.3 The procedure for determination of time extensions for unusually severe weather shall be as set forth in this Section 4.3.6.3. The following listing defines monthly anticipated adverse weather for the Contract period.

Contractor's schedule must reflect these anticipated adverse weather delays in all weather dependent activities.

MONTHLY ANTICIPATED ADVERSE WEATHER CALENDAR DAYS

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
08	05	03	04	06	04	05	05	03	02	03	06

The schedule above will constitute the base line for monthly, or a portion thereof, weather time evaluations. Upon acknowledgement of notice to proceed and continuing throughout the Contract, on a monthly basis, actual adverse weather days will be recorded on a calendar day basis (including weekends and holidays) and compared to the monthly anticipated adverse weather schedule, above. The term "actual adverse weather days" shall include days materially impacted by adverse weather. The number of actual adverse weather days shall be calculated chronologically from the first to the last day in each month. Once the number of actual adverse weather days anticipated in the schedule above has been exceeded, Owner will examine all actual adverse weather days to determine whether Contractor is entitled to a time extension. These actual adverse weather days must prevent 50 percent or more of Contractor's workday, delay Work critical to timely completion of the Project, and be documented in Contractor quality control reports. Owner will convert any delays meeting these requirements to calendar days and issue a Change Order to Contractor.

4.3.7 If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written

notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 60 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

4.3.8 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a Change Order or Construction Change Directive or as a result of other changes in the Work or variations from quantities that are included in the Contract Documents as estimated quantities for unit priced Work, so that application of such unit prices to estimated quantities of Work stated in the Contract Documents will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted. A material change in the estimated quantities stated in the Contract Documents shall be deemed to have occurred only when the unit priced Work item quantity is increased in excess of 125 percent or decreased below 75 percent of the original quantity stated in the Contract for such unit priced Work item. This Section 4.3.8 shall apply only to unit priced work items where estimated quantities are stated in the Contract Documents.

4.3.9 Unless expressly provided otherwise in the Contract, the Contractor and Owner hereby mutually waive all claims against the other for all consequential damages arising out of or relating to this Contract. This waiver includes, but is not limited to, (1) damages incurred by the Owner for rental expenses, loss of use, income profit, financing, business reputation, and for loss of management of employee productivity or for the services of such person, and (2) damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit. This waiver is applicable without limitation to all consequential damages due to Owner's termination in accordance with Article 14. Nothing contained in this Section 4.3.9 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

4.4 MEDIATION. Any Claim arising out of or related to the Contract shall be subject to mediation prior to the institution of legal or equitable proceedings by either party. The parties shall endeavor to resolve their Claims by mediation the procedures for which shall be mutually agreed upon by the parties. Request for mediation shall be provided by written notice to the other party. The request may be made concurrently with the institution of legal or equitable proceedings but, in such event, mediation shall proceed in advance of legal or equitable proceedings which shall be stayed pending mediation for a period of 60 days from the date of receipt of the request by the other party, unless stayed for a longer period by agreement of the parties or court order. In the event the parties cannot agree upon a mediator and on the procedures and timing for mediation within 60 days of a party's receipt of a request for mediation, such failure shall not preclude either party from instituting legal or equitable proceedings.

ARTICLE 5
SUBCONTRACTORS

5.1 GENERAL. Subcontractors, Sub-subcontractors, and material suppliers are not to contact Architect or Owner directly. All requests for information should be directed to the Contractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner will promptly reply to the Contractor in writing stating whether or not the Owner, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner to reply promptly shall constitute notice of no reasonable objection.

5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to

whom the Contractor has made reasonable objection.

5.2.3 If the Owner has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

5.2.4 The Contractor shall not change a Subcontractor, person, or entity previously selected if the Owner makes reasonable objection to such substitute.

5.3 SUBCONTRACTUAL RELATIONS. By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, the Contract these Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

5.4.1.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and

5.4.1.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

5.5 LIMITATIONS. Contractor shall be fully responsible for the acts and omissions of its Subcontractors and of the persons directly or indirectly employed by them. Every Subcontractor shall be bound by the terms of the Contract Documents; provided however, that no contractual relationship shall exist between any Subcontractor and Owner, unless it is evidenced in a separate contract independent of the Contract.

ARTICLE 6
CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. If the Contractor claims that delay or additional cost

is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Section 4.3.

6.1.2 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor and the separate contractors until subsequently revised.

6.1.3 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of a separate contractor.

6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

6.3 OWNER'S RIGHT TO CLEAN UP. If a dispute arises among the Contractor, separate contractors, and the Owner as to the responsibility under their respective contracts for maintaining the Project site and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner will allocate the cost among those responsible.

ARTICLE 7
CHANGES IN THE WORK

7.1 GENERAL

7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive, or order for a minor change in the

Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement among the Owner and Contractor; a Construction Change Directive may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Owner or the Architect with the consent of the Owner.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

7.2 CHANGE ORDERS

7.2.1 A Change Order shall include all of the following:

7.2.1.1 change in the Work;

7.2.1.2 the amount of the adjustment, if any, in the Contract Sum; and

7.2.1.3 the extent of the adjustment, if any, in the Contract Time.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

7.3.3.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

7.3.3.2 unit prices stated in the Contract Documents or subsequently agreed upon;

7.3.3.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

7.3.3.4 as provided in Section 7.3.6.

7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect and Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time, or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined on the basis of actual reasonable costs incurred by the Contractor in executing the Construction Change Directive, as documented by

the Contractor, and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an allowance for overhead and profit in accordance with the schedule of construction modification procedures identified in General Requirements. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.6 shall be limited to the following:

7.3.6.1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

7.3.6.2 costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

7.3.6.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

7.3.6.4 costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes related to the Work; and

7.3.6.5 additional costs of supervision and field office personnel directly attributable to the change.

7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in applications for payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Owner will make an interim determination for purposes of monthly progress payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.

7.3.9 When the Owner and Contractor agree concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.4 MINOR CHANGES IN THE WORK. The Architect, with the consent of the Owner, and the Owner will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8
TIME

8.1 GENERAL

8.1.1 The date of commencement of the Work is the date established in the Contract.

8.1.2 Work or storage of materials or equipment on site shall not commence until the later of the date written notice to proceed is effective, or upon execution of the Contract. In no event shall construction commence until the Contract is executed. Following execution of the Contract it is

essential that performance under the Contract begin within ten days of Owner's Notice to Proceed.

8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.6.

8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

8.2 PROGRESS AND COMPLETION

8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Contract, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days (or such other mutually agreed) period before commencing the Work.

8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.2.4 In the event Contractor shall fail to complete the Work by the completion date provided in the Contract, then Contractor shall be considered to be in breach of the Contract and will be liable to Owner for any and all damages suffered by Owner as a result of such breach of Contract.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 In the event that, at any time, Contractor’s commencement or performance of the Work is delayed or interfered with by acts or neglect of the Owner or Architect, or of any employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, other causes beyond the Contractor’s control, or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine, but Contractor shall not be entitled to any increase in the Contract Sum or to damages or additional compensation as a consequence of such delay or interference. No allowance for an extension of the Contract Time for any cause whatsoever shall be claimed by, or granted to, Contractor unless Contractor shall have made written request within the time periods and in the manner set forth in the Contract Documents.

8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.

8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under any provision of the Contract Documents.

ARTICLE 9
PAYMENTS AND COMPLETION

9.1 SCHEDULE OF VALUES

9.1.1 Before the first application for payment, the Contractor shall submit to the Owner a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's applications for payment.

9.1.2 See the General Requirements for the schedule of values.

9.2 APPLICATIONS FOR PAYMENT

9.2.1 See the General Requirements for applications for payment.

9.2.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site for such materials and equipment stored off the site.

9.2.3 The Owner may approve progress payments in an amount equal to 95% of all work and materials under the following conditions:

9.2.3.1 The Contractor shall obtain the approval of the Owner's Representative before making any arrangements to obtain an Application for Payment for materials stored off the site. Materials must be suitable for storage and must be properly packaged as necessary.

9.2.3.2 The Contractor shall furnish and maintain a suitable storage site and proper storage conditions, which must be approved in advance by the Owner's Representative.

9.2.3.3 Material covered by a request for application for partial payment must be stored above grade, and must be properly protected at all times against weather, heat, cold, moisture, vandalism or theft, and other hazards as the material may require. All protection must be provided by the Contractor, at its own expense, and must be maintained throughout the storage period.

9.2.3.4 Material must not be commingled with other similar material, but must be stored by itself and must be plainly labeled, "PROPERTY OF THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA", with project name.

9.2.3.5 Material must be stored so that it can be readily inspected, measured, and counted, at all times, by the Owner and its representatives.

9.2.3.6 Request for application for partial payment for materials stored under the above conditions must be accompanied by a bill of sale, properly identifying the material and transferring ownership of the materials to the Board of Regents. The bill of sale must be accompanied by an inventory of stored material, together with a description of the storage site by street number and city, or by a legal description of the premises.

9.2.3.7 The Contractor agrees that, in accepting partial payment for the stored material, they are in no way relieved of responsibility for the safe storage of the material and their safe transportation to, and installation in, the Work or for furnishing and installing the material in strict accordance with plans and specifications.

9.2.3.8 The Contractor further agrees that acceptance by the Owner of a bill of sale for stored material does not imply acceptance of such material for the purpose of this Contract. Such acceptance shall not occur until completion of the Work by the Contractor and final acceptance thereof by the Owner.

9.2.3.9 The Contractor further agrees that the usual guarantees covering its Work under the plans, specifications, and Contract are in no way impaired as a result of the partial payment and acceptance of the bill of sale. For additional conditions and requirements for

payment for materials stored off site, see the General Requirements.

9.2.4 The Contractor warrants that title to all Work covered by an application for payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an application for payment all Work for which application for payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

9.3 DECISIONS TO WITHHOLD PAYMENT

9.3.1 The Owner may withhold payment, in whole or in part, if in its sole discretion exercised in good faith based on observations at the site and on the data comprising the application for payment, the Work has not progressed to the point indicated, or the Work is not in conformance with the Contract Documents (subject to (i) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (ii) the results of any subsequent tests required or performed under the Contract Documents, and (iii) minor deviations from the Contract Documents correctable prior to completion), or the Contractor is otherwise not entitled to payment in the amount specified. If the Owner decides to withhold payment on all or part of the amount of the application, it will notify the Contractor within seven days of receipt of the application and any additional documentation requested by Owner. If the Owner and Contractor cannot agree on a revised amount, the Owner will pay the amount not in dispute in accord with the Contract Documents. The Owner may also withhold payment because of subsequently discovered evidence or subsequent observations, to such extent as may be necessary, in the opinion of the Owner, to protect the Owner from loss because of:

9.3.1.1 defective Work not remedied;

9.3.1.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

9.3.1.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials, or equipment;

9.3.1.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

9.3.1.5 damage to the Owner or another contractor;

9.3.1.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

9.3.1.7 persistent failure to carry out the Work in accordance with the Contract Documents.

9.3.2 When the above reasons for withholding payment are removed, payment will be made within a reasonable time for amounts previously withheld.

9.4 PROGRESS PAYMENTS

9.4.1 After the Contractor submits an application for payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents.

9.4.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, pursuant to the terms of its Subcontract, and, unless conflicting with Subcontract terms, reflecting percentages actually retained from payments to

the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner, reflecting percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner on account of portions of the Work done by such Subcontractor.

9.4.3 The Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner on account of portions of the Work done by such Subcontractor.

9.4.4 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

9.4.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections 9.4.2, 9.4.3 and 9.4.4.

9.4.6 An application for payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.4.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

9.5 FAILURE OF PAYMENT. If the Owner does not pay the sum requested in any application for payment within 45 days after receipt of such application, less any amount withheld in accordance with Section 9.3.1, then the Contractor may, upon seven days written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Sum shall be increased by the amount of the Contractor's reasonable cost of shut-down, delay and start-up, which shall be effected by appropriate Change Order in accordance with Sections 4.3.5 and 4.3.6, unless modified by the Contract as provided in Article 7.

9.6 SUBSTANTIAL COMPLETION

9.6.1 Upon prior notice to the Contractor, the Owner may occupy the Work, or portions thereof, for the purpose of performing its preparatory tasks to make the Work suitable for its intended use. Such preparatory tasks to be performed by Owner include, but are not limited to, installation of temperature controls, installation of moveable equipment, and performance of custodial work.

9.6.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect and Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

9.6.3 Upon receipt of the Contractor's list, the Architect and Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Contractor shall then submit a request for another inspection by the Architect and Owner to determine Substantial Completion.

9.6.4 When the Work or designated portion thereof is substantially complete, the Owner will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

9.6.5 The Certificate of Substantial Completion shall be submitted to the Contractor for its written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

9.7 PARTIAL OCCUPANCY OR USE

9.7.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.4.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work, and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect and Owner as provided under Section 9.6.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor. Upon prior notice to Contractor, Owner may occupy portions of the Work for the purpose of performing its preparatory tasks to make the Work suitable for its intended use. Such preparatory tasks to be performed by Owner include, but are not limited to, installation of temperature controls, installation of moveable equipment, and performance of custodial work.

9.7.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.7.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.8 FINAL COMPLETION AND FINAL PAYMENT

9.8.1 See the General Requirements for Project closeout requirements.

9.8.1.1 Upon completion of the items contained on the Contractor's list described in Section 9.6.2 and of any items identified by Owner or Architect as described in Section 9.6.3, Contractor shall request that a final inspection be made by Owner and Architect to determine final completion.

9.8.1.2 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon Owner's receipt of a final application for payment, the Owner and Architect will promptly make such inspection and, when the Owner and Architect find the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final certificate of completion stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the

Contract Documents. The Architect's final certificate of completion will constitute a further representation that conditions listed in Section 9.8.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

9.8.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner a final application for payment and either provides to Owner or satisfies all the following requirements: (1) an affidavit or other evidence satisfactory to Architect and Owner that payrolls, bills for materials and equipment, and other indebtedness connected with the Work (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, and (6) issuance by the Architect of a final certificate of completion. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.8.2.1 Before final payment can be made, Department of Labor Division of Employment Form No. 16. Certificate of Contribution Status, must be received from the State of Nebraska Department of Labor certifying that Contractor and each of its Subcontractors have paid all contributions and interest due through and including the calendar quarter immediately preceding date of substantial completion.

9.8.2.2 The Contractor and all Subcontractors engaged to perform any part of the Work shall make payment to the Unemployment Compensation Fund of the State of Nebraska of all contributions and interest due under the provisions of the Employment Security Law, Neb. Rev. Stat. § 48-601 et seq. (Reissue 1988), as amended, on wages paid to individuals employed in the performance of the Contract; and before final payment shall be made of the final 3% of the Contract Sum, the Contractor shall secure and file with the Owner, and cause any Subcontractor to secure and file with the Owner, written clearance from the Commissioner of the Department of Labor of the State of Nebraska, certifying that all payments then due of contributions or interest which may have arisen under this Contract have been made by the Contractor or any Subcontractor to the Unemployment Compensation Fund.

9.8.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Contractor, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed and accepted is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Owner. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.8.4 The making of final payment shall constitute a waiver of claims by Owner except those arising from:

9.8.4.1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;

9.8.4.2 failure of the Work to comply with the requirements of the Contract Documents or with

applicable codes and standards in the industry;

9.8.4.3 terms of special warranties required by the Contract Documents;

9.8.4.4 all warranties provided for in the Contract Documents; and

9.8.4.5 claims arising out of latent defects in the Work.

9.8.5 Acceptance of final payment by the Contractor, a Subcontractor, or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final application for payment.

9.9 PAYMENT CONTINGENT UPON AVAILABILITY OF APPROPRIATED FUNDS OR FUNDS APPROVED BY BOARD OF REGENTS. Any other provisions of the Contract Documents to the contrary notwithstanding, it is expressly understood and agreed that the legal obligation of the Owner to pay the Contract Sum or any part thereof shall be contingent upon the availability of funds appropriated by the legislative body appropriating funds as provided by law, or the availability or other funds of the Owner specifically approved by formal action of the Board of Regents for the purpose of payment of the Contract Sum or any part thereof. The appropriation, availability of funds, and the specific approval by formal action of the Board of Regents shall be conditions precedent to Owner's obligation to make any payment to Contractor for the Work. In event Owner is unable to make any payment under the Contract due to non-appropriation of funds by the legislative body appropriating funds or non-availability of other funds of Owner approved by the Board of Regents for purpose of payment of the Contract Sum or any part thereof, upon giving seven days' written notice to Contractor, Owner may terminate the Contract. Upon such termination, Contractor shall be entitled to recover from Owner payment as set forth and subject to the limitations of Section 14.4.3.

ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. This requirement applies continuously 24 hours per day during construction of the Project.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

10.2.1.1 employees on the site and other persons who may be affected thereby;

10.2.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

10.2.1.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury, or loss. More specifically, the Contractor shall give notice in writing as required before breaking ground to all persons, public utility companies, Owners of the property having structures or improvements in proximity to site of the Work, supervisors, inspectors, or those otherwise in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads, or otherwise, who may be affected by Contractor's operation, in order that they may remove any obstruction for which they are responsible and have a representative on site to see that their property is properly protected. Such notice does not relieve the Contractor of

responsibility for any damages, claims, and defense of all actions against the Owner and the Architect resulting from performance of such work in connection with or arising out of the Contract.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

10.2.4 The Contractor shall exercise the utmost care so as not to endanger life or property in the execution of the Work. Contractor is fully responsible for any and all damages, claims, and for the defense of all actions against Owner and Architect resulting from the failure to exercise such care. Explosives shall not be employed in the prosecution of the Work.

10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's supervisor unless otherwise designated by the Contractor in writing to the Owner and Architect.

10.2.7 The Contractor shall not load, or permit the loading of, any part of the construction or site so as to endanger its safety.

10.2.8 The duty of Architect to conduct the construction review of Contractor's performance does not include the review of the adequacy of Contractor's safety measures in, on, or near the site.

10.2.9 Utilities or other services indicated to be abandoned shall be maintained in service as required until new facilities are provided, tested, and ready for use. Contractor shall schedule work so that it does not necessitate long periods of shut-down of existing facilities and these shut-downs shall be coordinated with and at the convenience of Owner. See the General Requirements for additional requirements.

10.2.10 All improvements on or about the site and adjacent property which are not to be altered, removed, or otherwise changed shall be returned to conditions which existed prior to initiation of the Work.

10.3 HAZARDOUS MATERIALS

10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including, but not limited to, asbestos or polychlorinated biphenyl, encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. When the material or substance has been rendered harmless, Work in the

affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

10.3.3 To the fullest extent permitted by law, the Owner shall be responsible for claims, damages, losses, and expenses arising out of or resulting from performance of the Work in the affected area if in fact the material is asbestos or polychlorinated biphenyl and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner, or anyone for whose acts the Owner may be liable except if such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 10.3.3.

10.3.4 Fines, penalties, and any other action ordered by the Environmental Protection Agency or State Department of Environment arising from hazardous materials or substances at the site are the responsibility of Contractor and, as such, not recoverable from Owner in any fashion. Notwithstanding the foregoing, Contractor is not responsible for the presence of hazardous materials or substances at the site existing prior to Contractor taking control of the site.

10.3.5 The Contractor shall not bring, generate, keep, store, use, transport, release, or dispose of any hazardous or potentially hazardous materials on, in, or about the site except as required by the Contract Documents. The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall, to the extent permitted by law, be responsible for all cost and expense thereby incurred.

10.3.7 Notwithstanding the foregoing, any Hazardous Waste, which is generated from the performance of the Contract, shall be properly disposed of by Contractor, in a timely fashion, and in accordance with applicable Hazardous Waste laws and regulations. The Contractor shall coordinate the disposal with the Owner's Representative. The cost for Hazardous Waste management and disposal is Contractor's responsibility. Should Owner deem it prudent to dispose of any Hazardous Waste left on its property, as a result of Contractor's failure to meet its responsibilities, all costs associated with such disposal shall be deducted from any amount yet to be paid to the Contractor and/or billed to the Contractor. University Environmental Health and Safety is to be notified of all Hazardous Waste issues. Any non-hazardous waste generated in the performance of the Contract must be disposed of off campus by Contractor.

10.4 EMERGENCIES. In an emergency affecting the safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.3 and Article 7.

10.5 WATER PRECAUTIONS

10.5.1 Contractor shall keep all parts of the site, including excavations, free from any accumulation of water, no matter the source or cause.

10.5.2 The Contractor shall dispose of water and waste water in such manner as will not endanger public health and safety or cause damage or expense to property. The Contractor shall comply with all

laws, and administrative regulations, rules, or local ordinances applicable to the disposal of water and waste water. If sewers and streets are allowed to be used for drainage or disposal of water during construction, they shall be maintained and left satisfactorily clean upon completion of the Work.

10.6 SIGNS

10.6.1 The Contractor shall not erect signs, billboards, or advertisements on or about the site or any adjacent property, except as required by the Contract Documents. The display of signs other than those required by law shall be limited to those required by Contract Documents and for safety.

10.6.2 Contractor shall furnish and maintain all signs as required for execution of the Work and as required by law. Where required by the Contract Documents, the construction sign shall conform to the current 01 50 00 Project Construction Sign General Detail, or as directed by Owner.

10.7 WEAPONS POLICY. Possession of dangerous weapons (concealed or unconcealed) on the Owner's property, on the site, in the Contractor's vehicles, or in personal vehicles when on the Owner's property shall be a violation of the Owner's policy. (A dangerous weapon shall include guns, knives, explosives, or any other device as determined by the Owner which in the manner used or intended is capable of producing death or bodily injury. Devices authorized by the Vice Chancellor for Business and Finance and/or provided to its employees for the purpose of carrying out work responsibilities shall not be deemed dangerous weapons for the purpose of this policy.) Violations of this policy shall subject the offender to appropriate disciplinary action.

ARTICLE 11
INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, such insurance, as applicable, to protect from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

11.1.1.1 claims under workers' compensation, disability benefit, and other similar employee benefit acts which are applicable to the Work to be performed;

11.1.1.2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

11.1.1.3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

11.1.1.4 claims for damages insured by professional liability, environmental liability, cyber liability, unmanned aerial liability, and usual personal injury liability coverage;

11.1.1.5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

11.1.1.6 claims for damages because of bodily injury, death of a person, or property damage arising out of ownership, maintenance, or use of a motor vehicle;

11.1.1.7 claims for bodily injury or property damage arising out of completed operations; and

11.1.1.8 claims under employers' liability by members of an employee's family for loss of consortium or third party action against the Contractor.

11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment. For claims-made policies, such coverage shall be maintained for the number of years specified in the Contract Documents after the latest of: (1) final payment; (2) termination or expiration of the Contract; or (3) Substantial Completion. Contractor shall furnish Owner evidence of continuation of such insurance for the number of years specified in the Contract Documents. In the event the policy is not renewed, Contractor shall arrange for a four (4) year extended reporting period provision and provide evidence of the same.

11.1.3 Certificates of insurance acceptable to the Owner and evidencing all applicable coverages required in Section 11.1 shall be filed with the Owner prior to commencement of the Work. The following statement shall be added to the face of the certificate for all coverages except worker's compensation and professional liability: "The Board of Regents of the University of Nebraska is listed as an additional insured." These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required by Section 9.8.2. Information concerning reduction of coverage on account of revised limits or claims paid under the general aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

11.1.4 Contractor shall obtain insurance in accordance with University Certificate of Insurance Preparation Instructions UNFP 6.3.1.1.3.

11.1.5 Insurance required shall be written for not less than limits of liability that are specified on Owner's Insurance Form or as deemed appropriate for the size of the Project as determined by the Owner. Contractor shall submit this form prior to commencing any work on the Project, and it shall become part of the Contract Documents.

11.1.6 Contractor shall flow down all general liability, workers compensation, and automobile liability insurance requirements of Contractor in all contracts with Subcontractors and Sub-subcontractors. University may request and receive copies of certificates of such insurance maintained by Contractor, Subcontractors, or Sub-subcontractors.

11.2 OWNER'S LIABILITY INSURANCE. Owner may purchase and maintain at Owner's expense, liability insurance. Contractor cannot rely upon Owner's liability policy(ies) for any of Contractor's insurance obligations required herein.

11.3 PROPERTY INSURANCE

11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until the Project is added to Owner's permanent property insurance. This insurance shall include interests of the Owner, the Contractor, Subcontractors, and Sub-subcontractors in the Project.

11.3.1.1 Owner shall maintain an "All-peril" Builders Risk/Property Insurance Policy with a $2,000 deductible per occurrence for the structures of buildings while under construction, erection, or fabrication as shown and described in the Contract Documents. The Contractor is

responsible for the $2,000 per-occurrence- deductible for each claim. Coverage is restricted to the United States of America and the District of Columbia.

11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors, and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

11.3.1.3 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

11.3.1.4 Partial occupancy or use in accordance with Section 9.7 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

11.3.1.5 The Contractor shall notify both the Owner's Representative and the campus risk manager no later than 48 hours after knowledge of a loss. The Contractor shall file in writing Proof of Loss with the Owner's Representative and the campus risk manager within a reasonable length of time, but no later than the earlier of the time required by law or the applicable insurance policy. Contractor shall cooperate with Owner and Owner's insurer in the investigation of a loss and in the determination of the final amount of loss.

11.3.2 The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

11.3.3 The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

11.3.4 If, during the Project construction period, the Owner insures properties, real, personal, or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.4.8 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

11.3.5 Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

11.3.6 The Owner and Contractor waive all rights against (1) each other and any of their Subcontractors, Sub-subcontractors, agents, and employees, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The

Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

11.3.7 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.4.11. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

11.3.8 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with any legal determination. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

11.3.9 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power.

11.4 OWNER'S PROTECTIVE BOND

11.4.1 Contractor, before commencing the Work, shall furnish a bond, UNFP 6.3.1.1.6, in a sum not less than the Contract Sum, with a corporate surety company acceptable to Owner and authorized to do business in the State of Nebraska, conditioned for faithful completion of the Work and performance of Contract, and insuring payment of all laborers and mechanics for labor and payment of all material and equipment used or rented in performing the Contract.

11.4.2 Should the principal amount of the Owner's Protective Bond be modified as a result of a Change Order, the Contractor shall provide to the Owner written confirmation from the surety indicating that bond has been modified and to what extent it has been modified.

11.4.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE 12
UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

12.1.2 If a portion of the Work has been covered which the Architect has not specifically requested to examine

prior to it being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

12.2.1 **BEFORE OR AFTER SUBSTANTIAL COMPLETION**. The Contractor shall promptly correct rejected Work or Work failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

12.2.2 **AFTER SUBSTANTIAL COMPLETION**

12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.7.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the right to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF NONCONFORMING WORK. If the Owner prefers to accept Work which is not in

accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW AND FORUM. The Contract shall be governed by the laws of the State of Nebraska without giving effect to its conflicts of law provisions. Any legal actions brought by either party hereunder shall be in the state courts located in Lancaster County, Nebraska. Any legal action by the Contractor in relation to the Contract shall be instituted in accordance with the provisions of the Nebraska State Contract Claims Act (Neb. Rev. Stat. §§ 81-8,302 to 81-8,306).

13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, such attempt shall be void and that party shall nevertheless remain legally responsible for all obligations under the Contract. Should the Contractor assign its right to receive all or any part of any sum due or to become due under this Contract, the assignment must provide that the rights of assignees in and to any sum due or to become due under the Contract shall be subordinate to any liens and claims for services rendered; for payment of all laborers and mechanics for labor performed; for payment for all materials and equipment furnished and for payment for all materials and equipment used or rented in performance of the Work and for payment of any liens, claims, or amounts due to any governmental agency or affiliate.

13.2.2 The Owner may, without consent of the Contractor, assign the Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

13.3 WRITTEN NOTICE. Written notice shall be deemed to have been duly served if delivered in person t or sent by registered or certified mail, or if delivered at or sent by a nationally recognized overnight courier to the last business address known to the party giving notice. A facsimile, e-mailed copy of an original written signature, or other electronic or digital signature shall be deemed to have the same effect as an original written signature.

13.4 RIGHTS AND REMEDIES

13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to, and not a limitation of, duties, obligations, rights, and remedies otherwise imposed or available by law.

13.4.2 Notwithstanding any provision of the Contract to the contrary, no action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing by authorized representatives of the parties.

13.5 TESTS AND INSPECTIONS

13.5.1 Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect and Owner timely notice of when and where

tests and inspections are to be made so that the Architect may be present for such procedures.

13.5.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

13.5.3 If such procedures for testing, inspection, or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

13.5.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

13.5.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.6 INTEREST. Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the lesser of such rate as the parties may agree upon in writing or the rate allowed by law.

13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

13.7.1 As between the Owner and Contractor:

13.7.1.1 As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;

13.7.1.2 As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final certificate of completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final certificate of completion; and

13.7.1.3 As to acts or failures to act occurring after the relevant date of issuance of the final certificate of completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Section 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever last occurs.

13.8 DEBARMENT LIST. The Contractor certifies and warrants that it has not been debarred, suspended, or declared ineligible as defined in the Federal Acquisition Regulation 48 CFR Ch.1 Subpart 9.4. The Contractor also certifies that the Contractor, its partners, directors, officers, employees, licensees, subcontractors, or agents have not been excluded or debarred or otherwise become ineligible to participate in federal health care programs pursuant to 42 USC § 1320a-7. The certification and warranty set forth in this Section shall be an ongoing certification and warranty during the term of the Contract, and the Contractor shall immediately notify the Owner

of any change in the status of the certification and warranty set forth in this Section. If the Contractor becomes excluded from federal health care program participation or placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors, the Contract may be terminated immediately, for cause, by the Owner. If any partners, directors, officers, employees, licensees, subcontractors, personnel, or agents of the Contractor become excluded from federal health care program participation, such individual shall be removed from participating in the Contract immediately. Failure by the Contractor to remove such excluded individual immediately shall provide the Owner the right to terminate the Contract immediately for cause.

13.9 TAXPAYER TRANSPARENCY ACT. Under Neb. Rev. Stat. §§ 84-602.01 to 84-602.04, the Owner is required to provide the Nebraska Department of Administrative Services with a copy of each contract that is a basis for an expenditure of state funds, including any amendments and documents incorporated by reference in the contract. Copies of all such contracts and documents will be published by the Nebraska Department of Administrative Services at https://statecontracts.nebraska.gov/. It shall be the sole responsibility of the Contractor (1) to notify the Owner of any requested redactions to the Contract, any amendment to the Contract, and any document incorporated by reference into the Contract and (2) to indicate the legal basis for such requested redactions at the time of execution. In addition, the Contractor shall defend any challenge to such redactions at its own expense. the Contractor's failure to request redactions to any contracts or documents released by the Owner under this Section shall constitute a complete waiver of any and all claims for damages caused by any such release.

13.10 PUBLIC RECORDS. Under Neb. Rev. Stat. §§ 84-712 to 84-712.09, information or records of or belonging to the Owner regarding, related to, or part of the Contract will be open to public inspection and copying unless exempted from disclosure in accordance with the Owner's interpretation and application of applicable law. It shall be the sole responsibility of the Contractor (1) to notify the Owner of requested redactions to any such information or records that may otherwise be required to be open to public inspection and copying and (2) to indicate the legal basis for such requested redactions. In addition, the Contractor shall defend any challenge to such requested redactions at its own expense. the Contractor's failure to request redactions to any information or records released by the Owner under this Section shall constitute a complete waiver of any and all claims for damages caused by any such release.

13.11 FEDERAL FUNDING COMPLIANCE. If the Contract involves federal funds, (a) Contractor's compliance in all respects with all applicable federal anti-discrimination laws is material to Contractor's performance under the Contract; (b) Contractor certifies that it does not operate any programs promoting diversity, equity, and inclusion that violate such laws; and (c) Contractor's failure to comply with such laws shall be considered a material breach of the Contract.

If the Contract is for $15,000 or more and involves federal funds, then the Contractor shall comply with 41 CFR §§ 60-300.5(a) and 60-741.5(a), which are incorporated herein by this reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and require action to employ and advance in employment individuals without regard to disability or veteran status.

If the Contractor has fifty (50) or more employees and the Contract involves payment of $50,000 or more in federal funds to the Contractor, then the Contractor shall develop or maintain a program as described in 41 CFR 60-741, subpart C. If the Contractor has fifty (50) or more employees and the Contract involves payment of $150,000 or more in federal funds to the Contractor, then the Contractor shall develop or maintain a program as described in 41 CFR 60-300, subpart C. To the extent any of the provisions of Appendix II to 2 CFR Part 200 apply to the Contract, such provisions are incorporated herein by this reference and apply to Contractor as a "contractor," "recipient," or "subrecipient."

13.12 NONDISCRIMINATION. Neither the Contractor nor any of its subcontractors shall discriminate against any employee, or applicant for employment to be employed in the performance of the Contract, with respect to hire, tenure, terms, conditions, or privilege of employment because of the race, color, religion, sex, disability, or national origin of the employee or applicant in accordance with the Nebraska Fair Employment Practice Act (Neb. Rev. Stat. §§ 48-1101 to 48-1125).

13.13 LOGOS OR UNIVERSITY MARKS. The Contractor shall not use or display any University campus name, logo, trademark, service mark (individually a "Mark" and collectively the "Marks") and/or other indicia designated by

the Owner as a source identifier, unless expressly authorized in writing by the Owner. Any unauthorized use of Marks is expressly prohibited. The Contractor shall not use University's name in any manner that acts as an endorsement or is an appearance of any endorsement in any promotion, advertisement, solicitation, or other communication, especially as it relates to the Contractor's business.

13.14 CONFLICT OF INTEREST. The Contractor certifies, to the best of its knowledge and belief, that (1) there is no unresolved actual or potential conflict of interest related to the Contract and (2), if the Contractor is a University employee, immediate family member of a University employee, or business associated with a University employee and the Contract is valued at $2,000 or more, the Contractor has, prior to execution of the Contract, provided written notification to the vice president for business and finance or relevant vice chancellor for business and finance, as applicable, of the Contractor's status as, relation to, or association with a University employee and of the Contract. If an actual or potential conflict of interest related to the Contract arises during the term of the Contract, the Contractor shall provide to the vice president for business and finance or relevant vice chancellor for business and finance, as applicable, a written disclosure statement that describes all relevant information concerning the actual or potential conflict of interest. If the actual or potential conflict of interest cannot be resolved or the Owner determines the Contractor's certification set forth in this Section is false, the Owner may declare the Contract void and of no further force or effect and the Owner shall have no further obligations under the Contract.

13.15 NO PERSONAL LIABILITY. In no event shall any regent, official, officer, employee, agent, or student of University be personally liable or responsible for any representation, statement, covenant, warranty or obligation contained in, or made in connection with, the Contract, express or implied.

13.16 FOREIGN ADVERSARY CERTIFICATION. The terms in this Section defined in Neb. Rev. Stat. § 73-903 shall have the meaning defined therein. If the Contract is for a technology-related product or service and no exception set forth in Neb. Rev. Stat. § 73-906(2) applies, the Contractor certifies that it is not a scrutinized company, it will not subcontract with any scrutinized company for any aspect of performance of the Contract, and any products or services provided under the Contract do not originate with a scrutinized company. The certification set forth in this Section shall be an ongoing certification during the term of the Contract and the Contractor shall immediately notify the Owner of any change in the status of the certification set forth in this Section.

13.17 CONFIDENTIALITY

13.17.1 **Definition**. "Confidential Information" means all information furnished by one party (the "Disclosing Party") to the other party (the "Receiving Party") that is (1) clearly marked or otherwise clearly designated as confidential or (2) should be reasonably understood by the Receiving Party to be confidential.

13.17.2 **Obligations**. Except as otherwise required by law, the Receiving Party shall not use Confidential Information for any purpose other than the purpose for which the Confidential Information was disclosed (the "Purpose"); shall protect and maintain Confidential Information in strict confidence; and shall not , without the Disclosing Party's prior written consent, disclose Confidential Information to any other person or entity, except those of the Receiving Party's directors, officers, or employees ("Representatives") on a need-to-know basis to carry out the Purpose and who are advised of the confidential nature of the information and are under obligations of confidentiality and non-use at least as stringent as those herein..

13.17.3 **Return or Destruction**. Upon termination of the Contract or request of the Disclosing Party, the Receiving Party shall return or destroy all Confidential Information including materials containing such Confidential Information. Notwithstanding the foregoing, the Receiving Party (1) may retain one (1) archival copy of the Confidential Information for legal, regulatory, or compliance purposes; (2) shall not be required to return or destroy any computer files created during automatic system backups that are subsequently stored securely and to which its Representatives do not have routine or unrestricted access; and (3) shall continue to be bound by the non-use and confidentiality obligations of the Contract in relation to any Confidential Information retained pursuant to this Section 13.19.3 for as long as it is retained.

13.17.4 **Exceptions**. The obligations of this Section 13.19 do not apply to information that is in the public domain; independently known, obtained, or discovered by the Receiving Party; or hereafter supplied to the Receiving Party by a third party without restriction. If the Receiving Party is compelled by law to disclose any Confidential Information, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted).

13.17.5 **Term**. The obligations of Section 13.19 shall survive termination of the Contract (1) for a period of two (2) years from the date of termination of the Contract and (2) indefinitely in relation to Confidential Information retained under Section 13.19.3.

13.18 RELATIONSHIP OF PARTIES. No agency, partnership, or joint venture is created by the Contract. The parties affirmatively disclaim any intent to form such relationship. The Contractor is solely responsible for maintenance and payment of insurance and the like that may be required by federal, state, or local law with respect to any sums paid hereunder. The Contractor is not the Owner's agent or representative and has no authority to bind or commit the Owner to any agreements or other obligations except as authorized in writing by Owner.

13.19 RIGHT TO AUDIT PRIVILEGE. The Owner reserves the right to audit or inspect work performed by the Contractor under the Contract. The Owner may participate directly or through an appointed representative in order to verify that the services related to the Contract have been performed in accordance with the procedures indicated.

13.20 SEVERABILITY. The terms of the Contract are severable. If any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable the remainder of the provisions shall continue to be valid and enforceable.

13.21 SURVIVAL. Provisions surviving termination of the Contract are those which on their face affect rights and obligations after termination and also include provisions concerning indemnification, confidentiality, representations and warranties, and governing law and venue.

13.22 ELECTRONIC SIGNATURES. The Contract and any other documents to be delivered in connection herewith may be electronically signed, and any electronic signatures appearing on the Contract, or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

13.23 FORCE MAJEURE. Neither party shall be liable to the other for damages for any delay in performance arising out of causes beyond its reasonable control and without its fault or negligence, including without limitation: (1) fire, flood or water damage, elements of nature or other acts of God, including any of the foregoing that are harmful to electronic circuitry; (2) outbreak or escalation of hostilities, war, riots, or civil disorders in any country; (3) act or omission of the other party or any governmental authority, (4) labor disputes (whether or not the employees' demands are reasonable or within the party's power to satisfy), (5) non-performance by a third party (including any voice or data telecommunications common carrier), (6) failures or fluctuations in telephone, computer or other telecommunications equipment or lines or other equipment, (7) the real, potential, or credible threat of terrorist activity, or (8) a health emergency (e.g. serious outbreak of contagious disease such as an influenza pandemic) which in the judgment of Owner poses a serious threat to the public health. In the case of any such excusable delay, the non-performing party will be excused from performance of any affected obligation only for so long as the cause of the excusable delay prevails and such party continues to use commercially reasonable efforts to re-commence performance of its obligations as soon as possible; provided however, that the parties may mutually agree that such excusable delay is cause to cancel the Contract in its entirety, in which case neither party shall be liable to the other for any further performance in relation obligations arising after cancellation.

13.24 COMPLIANCE WITH LAWS AND REGULATIONS; UNIVERSITY POLICIES. Contractor shall comply with all applicable federal, state, and local laws and University policies. Contractor agrees to indemnify Owner against any loss, cost, liability, or damage by reason of Contractor's violation of any applicable law or regulation. Contractor must be qualified to conduct the business necessary to the performance of the Contract in the State of Nebraska throughout the duration of the Contract term or any renewal thereof. Contractor shall obtain, at its own cost and expense, all necessary licenses, professional certifications, and permits and shall assume the responsibility for and pay all applicable fees and all other taxes that are now imposed or may be imposed in the

future by any governmental authority arising out of the conduct of Contractor's business.

13.25 FAIR LABOR STANDARDS. Under to Neb. Rev. Stat. § 73-102, Contractor shall maintain and states that it is complying with and will continue to comply with fair labor standards in the conduct of its business and its performance of the Contract.

ARTICLE 14
TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

14.1.1.1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;

14.1.1.2 an act of government, such as a declaration of national emergency which requires all Work to be stopped; or

14.1.1.3 because the Owner has not made payment on an application for payment within the time stated within the Contract Documents.

14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

14.1.3 If one of the reasons described in Sections 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment as set forth and subject to the limitations in Section 14.4.3.

14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven (7) additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment as set forth and subject to the limitations in Section 14.1.3.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 The Owner may terminate the Contract if the Contractor:

14.2.1.1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

14.2.1.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

14.2.1.3 persistently disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction;

14.2.1.4 otherwise is guilty of substantial breach of a provision of the Contract Documents; or

14.2.1.5 fails to carry out the terms of the Contract or fails to make substantial progress toward the fulfillment of those terms.

14.2.2 When any of the above reasons set forth in Sections 14.2.1.1 to 14.2.1.4 exist, the Owner may, without prejudice to any other rights or remedies of the Owner, and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate the Contract and may, subject to any prior rights of the surety:

14.2.2.1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

14.2.2.2 accept assignment of subcontracts pursuant to Section 5.4; and

14.2.2.3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

14.2.3 When any of the above reasons set forth in Section 14.2.1.5 exist, the Owner may provide Contractor with a thirty days' written notice of the terms in breach, and immediately cancel the Contract if, after such notice, Contractor fails to remedy the breach within those thirty days.

14.2.4 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

14.2.5 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be determined by the Owner, upon application, and this obligation for payment shall survive termination of the Contract.

14.2.6 If Owner's termination of the Contract is based upon a reason that is subsequently determined to not be a default of this Contract, such termination shall instantaneously and automatically be deemed a termination for the convenience of Owner. In any such termination, the Owner shall be liable to Contractor only for accepted Work completed prior to the date of Owner's sending notice to Contractor of such termination, and Contractor agrees that in such case Owner is not and shall not be liable for any loss of anticipated profits on labor and material not yet furnished on the Project or on any portion of the unperformed Work.

14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

14.3.2.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

14.3.2.2 that an equitable adjustment is made or denied under another provision of the Contract.

14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

14.4.2.1 cease operations as directed by the Owner in the notice;

14.4.2.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

14.4.2.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

14.4.3 In case of such termination for Owner's convenience, the Contractor shall be entitled to receive payment for Work executed and costs incurred for terminating and demobilizing operating from the Project, but shall not be entitled to either overhead or profit on Work not executed.

ARTICLE 15
DEFINITIONS

15.1 DEFINITIONS. Terms capitalized in the General Conditions include those which are (1) specifically defined herein, (2) not defined herein but are defined by the American Institute of Architects or elsewhere in the Contract Documents, or (3) the titles of other documents published by the American Institute of Architects. The following capitalized terms shall have the following meanings in the Contract unless the context requires otherwise:

15.1.1 **Agreement** "Agreement" means (1) one of the following agreements between the Owner and the Contractor that references these General Conditions and specifically enumerates the Contract Documents: Standard Form Construction Agreement, Short Form Contractor Agreement, Standard Form Agreement Between Owner and Construction Manager, Unit Price Construction and Maintenance Agreement; or (2) any other agreement between the Owner and the Contractor that references these General Conditions and specifically enumerates the Contract Documents.

15.1.2 **Architect.** "Architect" means the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Contract; is referred to throughout the Contract Documents as if singular in number; and, whether acting jointly or severally, includes the Architect's affiliates and authorized representatives and the terms "Engineer," "Architect/Engineer," and "Engineer/Architect" as indicated in bidding requirements.

15.1.3 **Board of Regents.** The "Board of Regents" means the Board of Regents of the University of Nebraska. The Board of Regents may also be referred to as Owner.

15.1.4 **Change Order.** "Change Order" means a written instrument prepared by the Owner or by the Architect and signed by the Owner and Contractor that contains the items listed in Section 7.2.1.

15.1.5 **Conditions of the Contract.** "Conditions of the Contract" means the General Conditions, supplementary conditions, and other conditions, which form part of the Contract Documents.

15.1.6 **Construction Administration Phase.** "Construction Administration Phase" means the period commencing on the award of the Contract and terminating one year after the date of Substantial Completion.

15.1.7 **Construction Change Directive.** "Construction Change Directive" means a written order prepared by the Owner or by the Architect and signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both.

15.1.8 **Contract.** "Contract" means the entire and integrated agreement between the parties and consists of the Contract Documents. The Contract supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. Neither the Contract nor the Contract Documents shall be construed to create a contractual relationship of any kind (1) between the Architect and Contractor or any Subcontractor, (2) between the Owner and a Subcontractor or Sub-subcontractor, (3) between the Owner and Architect or (4) between any persons or entities other than the Owner and Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

15.1.9 **Contract Documents.** "Contract Documents" means the documents specifically enumerated in the Agreement including without limitation and to the extent not explicitly excluded the Agreement, Conditions of the Contract, Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract.

15.1.10 **Contract Sum.** "Contract Sum" means the total amount payable, including authorized adjustments, by the Owner to the Contractor for performance of the Work under the Contract Documents.

15.1.11 **Contract Time.** Unless otherwise provided in the Contract Documents, "Contract Time" means the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of Work.

15.1.12 **Contractor.** "Contractor" means the person or entity identified as such in the Contract and includes the Contractor and the Contractor's Representative. The term "Contractor" is referred to throughout the Contract Documents as if singular in number.

15.1.13 **Contractor's Representative.** "Contractor's Representative" means the person or entity identified by the Contractor as the person or entity authorized to represent the Contractor's interests and bind the Contractor under the Contract Documents.

15.1.14 **Drawings.** "Drawings" means the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

15.1.15 **General Conditions**. "General Conditions" means these General Conditions, which form part of the contract documents and apply to all phases and parts of the Work.

15.1.16 **General Requirements.** "General Requirements" means the General Requirements attached to the Agreement which form part of the Contract Documents.

15.1.17 **Hazardous Waste**. "Hazardous Waste" means hazardous wastes defined pursuant to the federal Resource Conservation and Recovery Act, as amended. The Contractor must furnish receipts (shipping manifests) from recognized official disposal sites for the disposal of Hazardous Waste including, but not limited to, asbestos and PCB ballasts.

15.1.18 **Instruments of Service**. "Instruments of Service" means representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and similar materials.

15.1.19 **Modification**. "Modification" means (1) a written amendment to the Contract signed by authorized representatives of both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, instructions to bidders, sample forms, the Contractor's bid or portions of Addenda

relating to bidding requirements).

15.1.20 **Owner.** "Owner" means the Board of Regents of the University of Nebraska , includes the Owner and the Owner's Representative, and is referred to throughout the Contract Documents as if singular in number.

15.1.21 **Owner's Representative.** "Owner's Representative" means the person or entity identified by the Owner as the person or entity authorized to represent the Owner's interests and bind the Owner under the Contract Documents.

15.1.22 **Product Data. "**Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

15.1.23 **Project.** "Project" means the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

15.1.24 **Project Manual.** "Project Manual" means a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract, and Specifications.

15.1.25 **Samples. "**Samples" means physical examples which illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.

15.1.26 **Shop Drawings. "**Shop Drawings" means drawings, diagrams, schedules, and other data specifically prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

15.1.27 **Specifications.** "Specifications" means that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards, and workmanship for the Work, and performance of related services.

15.1.28 **Subcontractor.** "Subcontractor" means a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site, includes the Subcontractor and an authorized representative of the Subcontractor and does not include a separate contractor or subcontractors of a separate contractor. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number.

15.1.29 **Substantial Completion. "**Substantial Completion" means the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use and a temporary occupancy permit has been issued by the appropriate public authorities in accordance with all applicable laws and regulations.

15.1.30 **Sub-subcontractor.** "Sub-subcontractor" means a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number.

15.1.31 **University.** "University" means the University of Nebraska

15.1.32 **Work.** "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

End of General Conditions

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