

# Executive Design Professional Agreement for CM At-Risk Delivery

## Cover Sheet and Instructions

APPROVED DOCUMENT – This document is approved by the Office of the President and Office of the General Counsel for use by the Facility and is available on electronic media.

<b>PURPOSE OF DOCUMENT:</b>	Used to contract with executive architects, executive landscape architects, and executive and consulting engineers (structural, civil, mechanical, and electrical.)		
<b>CROSS-REFERENCE TO FACILITIES MANUAL:</b>	None		
<b>CONTENTS:</b>	Executive Design Profession Agreement for CM At-Risk Delivery		
<b>FOR USE WITH:</b>	CM/Contractor Agreement		
<b>COMPLETED BY:</b>	✓	Filling in	✓
			Adding Text
			No Data Required
<b>ITS USE IS:</b>	✓	Required	Optional

**NOTE:** To use the electronic file of this document, you must go to the “Tools” pull down menu in Microsoft Word, select “Options,” select the “View” tab, and then put a check in the box “Hidden text.” Most instructions and alternate language is displayed in hidden text. Do not print the hidden text for the final document.

### Completion Instructions:

- Notes, suggested text, instructions and other information is formatted using the following methods:
  - Hidden text within brackets. Read the material within the brackets and take the appropriate action (usually inserting text or selecting from a choice of texts.) When printing this document, the default print property will not print the hidden text.
  - Coded instruction within brackets. {This is an example of the format.} The instructions and shading will disappear when the required information is typed.
- Exhibit L is unique to EDPA for CM at Risk. For remaining Exhibits B-K, refer to Executive Design Professional Agreement, Version B.

### Modifications and Additions:

Only provisions where imbedded instructions authorize modification may be changed. The remainder of the document shall not be altered without the approval of the Office of the President. Areas shaded in gray, without brackets, represent suggested text that may be modified by the Facility to meet the needs of the Project. This is an example of the format. Ensure that any modified or added text is consistent with the Contract Documents.

### Comments:

None

EXECUTIVE DESIGN PROFESSIONAL AGREEMENT FOR CM AT-RISK DELIVERY  
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**EXECUTIVE DESIGN PROFESSIONAL AGREEMENT FOR CM AT-RISK DELIVERY**

**between**

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA**

**and**

**THE DESIGN PROFESSIONAL**

This AGREEMENT is made on the { } day of { } in the year { } between The Regents of the University of California, a California Corporation, hereinafter called "University" and {INSERT THE NAME OF THE EXECUTIVE ARCHITECT OR ENGINEER} hereinafter called "Design Professional".

The above named individual or firm shall be the Executive {Architect OR Engineer} and shall comply with the licensing laws of the State of California regarding the practice of {Architect OR Engineer} in performing the services set forth in this Agreement for the following project:

UNIVERSITY OF CALIFORNIA, {FACILITY NAME}

{PROJECT NUMBER}

{PROJECT NAME}

PROJECT DESCRIPTION (include approximate square footage): { }

CONSTRUCTION BUDGET: {DOLLAR AMOUNT}

ENR: {ENTER THE APPROPRIATE ENGINEERING NEWS RECORD CONSTRUCTION COST INDEX.}

## **ARTICLE 1 - GENERAL PROVISIONS**

### **1.1 GENERAL REQUIREMENTS**

**1.1.1** This Agreement shall be governed by the laws of the State of California.

**1.1.2** In the event of a conflict between the provisions of any exhibit to this Agreement and the Agreement, the provisions of this Agreement shall govern.

**1.1.3** University's exercise of any of its rights or remedies prescribed in this Agreement shall not relieve Design Professional from responsibility for damages or other losses incurred or to be incurred by University as a result of Design Professional's breach of its obligation under this Agreement.

**1.1.4** Each design phase (Schematic, Design Development, Bidding Documents and Construction Documents), portions of which design phases are anticipated to occur concurrently, shall be subject to a separate written authorization to proceed to be issued by University. Work on a design phase shall not commence until issuance of the appropriate written authorization to proceed. Work on a design phase shall be based on documents, if any, from the prior design phase approved by University in writing (to the extent that such work is complete), any written directives by University with respect thereto, and any adjustments authorized by University in the Project Program or Construction Budget.

**1.1.5** Time is of the essence for this Agreement.

**1.1.6** Design Professional shall cooperate with University, its designees, and CM/Contractor in furthering the interests of University.

### **1.2 DESIGN PROFESSIONAL STANDARD OF CARE; CONSTRUCTION MANAGER AT-RISK MODE OF CONTRACTING**

**1.2.1** Design Professional, its officers, agents, employees, subcontractors, consultants and any persons or entities for whom Design Professional is responsible, shall provide all services pursuant to this Agreement in a manner consistent with the standard of care under California law applicable to those who specialize in providing such services for projects of the type, scope, and complexity of the Project; such services shall be provided in a manner consistent with the Construction Manager At-Risk Mode of Contracting as defined herein, which will require Design Professional, at no additional cost to University, to prepare plans and specifications for discrete portions of the Work that can be incorporated into separate Bid Packages for the various Subcontractors who will construct the Project. Such Subcontracts may be awarded concurrently with other subcontracts or individually, at different points in time, which may result in Design Professional completing portions of the design after commencement of construction of the Project and/or providing Construction Phase services before completion of all design phase services. The design work for each separate Bid Package shall separately be subject to all requirements applicable to the various phases set forth in this agreement (including the phases set forth in Article 3) and shall be performed in a manner consistent with the construction budget and Project Schedule.

### **1.3 DEFINITIONS**

Unless defined differently herein, terms used in this Agreement shall have the same meaning as those used in University's Bidding Documents General Conditions (Exhibit A).

**1.3.1 As-builts (As-built Drawings and Specifications).** The term "As-builts" shall mean the record copy of the Contract Documents prepared by the CM/Contractor to record as-built conditions, current changes, and selections made during construction.

**1.3.2 Construction Budget.** The term "Construction Budget" shall mean University's written statement of funds available to pay for the cost of construction.

**1.3.3 Construction Cost Index.** (ENR) The term "Construction Cost Index" shall mean the *Engineering News Record's* Construction Cost Index for the time period designated by University. The 20 cities average is used as a benchmark.

**1.3.4 Construction Documents.** The term "Construction Documents" shall mean the documents described in subparagraph 2.4.1 of this Agreement.

**1.3.4A Construction Manager At-Risk Mode of Contracting.** The term "Construction Manager At-Risk Mode of Contracting" shall mean the contracting mode used by the University to construct the Project. Under the Construction Manager At-Risk Mode of Contracting, the University will select a CM/Contractor through competitive bidding. The CM/Contractor will be responsible, within the limits prescribed in its contract, to provide both pre-construction and construction services (these services may overlap when portions of the design are being developed concurrently with ongoing construction). Pre-construction services will include using the Construction Documents prepared by Design Professional to solicit bids from Subcontractors; entering into Subcontracts with such Subcontractors consistent with competitive bidding laws applicable to the University; and utilizing the Subcontractors to whom such Subcontracts have been awarded to complete the Project within the Contract Time.

**1.3.5 Contract Documents.** The term "Contract Documents" shall mean the Advertisement for Bids, Instruction to Bidders, Supplementary Instructions to Bidders, Bid Form, Agreement, General Conditions, Supplementary Conditions, Exhibits to the Construction Documents, Specifications, List of Drawings, Drawings, Addenda, Notice to Proceed, Change Orders, Notice of Completion and all other items identified as contract documents in the Construction Contract Agreement between the University and the CM/Contractor.

**1.3.6 Coordination.** The term "Coordination" shall mean that the documents shall be consistent and in conformance each part with all other parts.

**1.3.7 Estimated Project Construction Cost.** The term "Estimated Project Construction Cost" shall mean Design Professional's written estimate in the form specified by University (Exhibit C), of the total Construction Cost of the Project at the various stages of the design process.

**1.3.8 Project.** The term "Project" means the project described on page 1 of this Agreement.

**1.3.9 Project Architect (or Engineer).** The term "Project Architect" or "Project Engineer" shall mean the specific University-approved Design Professional named in this Agreement who is the Design Professional's designated principal or staff member in charge of providing all services required by this Agreement.

**1.3.10 Project Program.** The term "Project Program" (Exhibit H) is a written statement of University's design objectives, constraints, and criteria, including space requirements and relationships, flexibility and expendability, special equipment and systems, and Project site requirements.

**1.3.11 Project Schedule.** The term "Project Schedule" shall mean the schedule prepared by University showing project milestones, funding, design, design review, construction, and other deadlines applicable to the Project. The University may make reasonable changes to the Project Schedule, consistent with the Construction Manager At-Risk Mode of Contracting, which may include adding or adjusting timelines for preparing plans and specifications for discrete portions of the Work to be incorporated into separate Bid Packages that may be awarded concurrently with other subcontracts or individually, at different points in time, and which may result in Design Professional completing portions of the design after commencement of construction of the Project and/or providing Construction Phase services before completion of all design phase services.

**1.3.12 Record Documents.** The term "Record Documents" shall mean those documents as described in subparagraph 2.10.1.

**1.3.13 Bidding Documents.** The term "Bidding Documents" shall mean those documents prepared and furnished by University for the purpose of obtaining bids from contractors to construct the Project, including without limitation, the General Conditions and General Requirements attached as Exhibit A.

**1.3.14 University.** The term "University" shall mean the Regents of the University of California.

**1.3.15 University Representative.** The term "University Representative" shall mean the person or entity providing University Representative services as indicated in the contract documents including, but not limited to, issuance of written communications with the CM/Contractor.

**1.3.16 University's Designated Administrator.** The term "University's Designated Administrator" shall mean the individual acting as University's Designated Administrator pursuant to paragraph 4.1.1.

**ARTICLE 2 - DESIGN PROFESSIONAL'S SERVICES AND RESPONSIBILITIES - BASIC SERVICES**

Basic Services to be provided by Design Professional consist of the services described in this Article 2.

**2.1 GENERAL**

**2.1.1** Design Professional shall be responsible for Construction Phase services only as described hereafter.

**2.1.2** To the extent deemed necessary by Design Professional to perform its services in accord with the Project Schedule (and all revisions and updates thereto), and as may be applicable at

each particular stage of the progress of the Project, Design Professional shall employ architects, mechanical, electrical, structural, and civil engineers licensed as such by the State of California, and such other consultants necessary for the provision of services under this Agreement. All consultants provided under basic services shall be paid by Design Professional. Design Professional shall submit, for approval by University, names of consultants for each professional element of service of the Project. University-approved consultants provided under basic service shall be as named below.

<u>Consultant Name</u>	<u>Discipline</u>
{LIST THE NAMES OF UNIVERSITY-APPROVED CONSULTANTS}	{LIST DISCIPLINE FOR EACH CONSULTANT}

Nothing in the foregoing shall create any contractual relationship between University and any consultants employed by Design Professional under the terms of this Agreement. Design Professional is as responsible for the performance of its consultants as it would be if it had rendered these services itself.

**2.1.3** Design Professional shall designate a principal or a staff member as the Project {Architect OR Engineer}. So long as the Project {Architect OR Engineer} performs in a manner acceptable to University, and remains in Design Professional's employ, the Project {Architect OR Engineer} shall remain in charge of all design and other services required under this Agreement, including attending design-related meetings for the Project, unless a substitution mutually acceptable to Design Professional and University is made. University-approved Project {Architect OR Engineer} shall be the person named below:

{LIST NAME OF UNIVERSITY-APPOINTED PROJECT ARCHITECT OR ENGINEER}  
2.1.

**2.1.5** Design Professional shall assist University in fulfilling the requirements of the authorities and funding agencies whose interests bear on the design, cost, and construction of the Project.

{LIST}

**2.1.6** Design Professional shall abide by all regulations imposed by authorities having jurisdiction over the Project.

**2.1.7** Design Professional shall cooperate with other professionals University may employ for related work.

**2.1.8** To the extent required by University, Design Professional shall consult with authorized employees, agents, and representatives of University relative to the design and construction of the Project.

**2.1.9** Design Professional shall review: site surveys; existing record documents; seismic data; mechanical, geotechnical, and other test reports; environmental documents; and any other documentation furnished by University. From an examination of the site and a review of available information, Design Professional shall determine whether such data are

sufficient for purposes of design or whether additional data are needed and, if so, recommend the manner in which it be provided and needed services obtained. Design Professional may rely on the information provided by University but only to the extent such reliance is consistent with Design Professional's obligations under this Agreement.

**2.1.10** Review, approval or acceptance of Design Professional's work whether by University or others and whether during Schematic Design Phase, Design Development Phase, Construction Documents Phase, Bidding Phase, Construction Phase, Guarantee to Repair Period, or otherwise, shall not relieve Design Professional from responsibility for errors and omissions in Design Professional's work.

**2.1.11** Design Professional shall prepare Construction Documents in compliance with applicable laws, codes, rules, regulations, ordinances, and standards including, without limitation, those listed in Exhibit C.

**2.1.12** As a result of the use of the form of contracting applicable to the Project, it is anticipated that Design Professional will concurrently perform certain of its obligations as set forth in this Agreement with regard to Schematic Design, Design Development, preparation of Construction Documents, preparation of Bidding Documents and services to be performed during Construction, as determined by the University. The services of Design Professional shall be performed in accordance with the Supplemental Requirements (Exhibit C). The Design Professional must provide for resources sufficient to permit the Design Professional to render all services pursuant to this Agreement in strict accord with the requirements of the Project Schedule (and all revisions and updates thereto). The Design Professional shall have the obligation and opportunity to contribute to the development of the Project Schedule (and revisions and updates thereto) as provided in this Agreement. The Design Professional shall strictly comply with the Project Schedule.

## **2.2 SCHEMATIC DESIGN PHASE**

**2.2.1** Upon written authorization to proceed, Design Professional shall evaluate the Project Program (Exhibit H) to ascertain the requirements of the Project and shall review and clarify Design Professional's understanding of these requirements with University and its CM/Contractor, if any.

**2.2.2** Design Professional shall provide a written preliminary evaluation of the Project program and the Construction Budget requirements each in terms of the other.

**2.2.3** Design Professional shall prepare and submit to University an outline of applicable provisions of building codes which apply to this Project. The outline shall include a written report and diagrammatic drawings which delineate the design criteria (e.g., exit paths, travel distances, required exits, rated walls, rated corridors, building occupancy, construction type, and fire zones). This graphic documentation of the design criteria shall be updated with each subsequent submittal.

### **2.2.4**

**2.2.5** Design Professional shall prepare Schematic Design studies consistent with and incorporating the Project Program requirements, including site plans, floor plans, elevations, sections, and other drawings, sketches, or graphic materials

needed to describe the Project (and Design Packages, if required by University) in three dimensions. Design Professional shall also prepare descriptive outline specifications indicating proposed architectural, structural, mechanical, and electrical systems and materials and other systems as described in Supplemental Requirements (Exhibit C). Schematic studies shall be consistent with the construction budget, Project Schedule and Design Packages, if required by University and shall be revised until approved by University as acceptable. Schematic Design studies shall be required for separate portions of the Project (and Design Packages, if required by University) in advance of completion of Schematic Design studies for the Project as whole.

**2.2.6** Design Professional shall submit a tabulation comparing both gross and assignable floor areas to the initial Project Program area requirements, as required by Exhibit C.

**2.2.7** Design Professional shall submit a written Estimated Project Construction Cost based on the documents submitted in this phase. The estimate shall be in the form included in Exhibit C. Design Professional shall submit a written Estimated Phase Construction Cost for each separate portion of the Project for which Design Professional submits a Schematic Design Study.

### **2.2.8**

### **2.2.9**

### **2.2.10**

## **2.3 DESIGN DEVELOPMENT PHASE**

**2.3.1** Upon University's written authorization to proceed and based on Schematic Design documents approved in writing by University and any written adjustments in the scope or quality of the Project or in the Construction Budget, Design Professional shall prepare for approval by University Design Development documents. These documents shall consist of such drawings, outline specifications, and narratives as are needed to establish and describe the size and character of the entire Project or Design Package(s). Design Professional shall incorporate into the Design Development documents architectural, structural, mechanical, and electrical systems, materials, and such other elements and other systems as described in Supplemental Requirements (Exhibit C). The Design Development documents shall be consistent with the Project Program (including the gross and assignable floor areas), the Construction Budget and the Project Schedule. The University may direct the Design Professional to prepare Design Development documents for the Project as a whole or for separate portions of the Project. If Design Development documents are prepared for separate portions of the Project, then Design Development documents may be prepared for later portions of the Project concurrent with the development of Construction Documents or Bidding Documents for earlier portion(s) of the Project, and/or concurrently with construction based upon those previously prepared documents. The Design Professional shall consult with the CM/Contractor and provide the CM/Contractor an opportunity to review and comment upon materials developed by the Design Professional during the Design Development Phase. All obligations of the Design Professional set forth in Article 2.3 shall be undertaken for the entire Project and for each and every separate portion of the Project.

**2.3.2** Design Professional shall furnish a tabulation comparing both gross and assignable floor areas to the Schematic Design Phase Project Program area requirements as required by Exhibit C.

**2.3.3** Design Professional shall furnish an update of the Schematic Design Phase building code analysis (or for applicable Design Packages) as required by Exhibit C that delineates the design criteria (e.g., exit paths, travel distances, required exits, rated walls, and rated corridors, building occupancy, construction type, and fire zones).

**2.3.4** Design Professional shall submit documentation supporting the design criteria for the structural (including structural loading), HVAC, plumbing, electrical, lighting and communication systems; and other specialized building systems.

#### **2.3.5**

**2.3.6** Upon completion of Design Development for each portion of the Project, Design Professional shall submit an Estimated Project Construction Cost based on the documents submitted to University for each such portion. At such time as Design Development is complete for all portions of the Project, Design Professional shall submit an Estimated Project Construction Cost based on the documents submitted to University for all portions of the project. All estimates submitted pursuant to this Article 2.3.6 shall be in the form indicated in Exhibit C.

## **2.4 CONSTRUCTION DOCUMENTS PHASE**

**2.4.1** Upon University's written authorization to proceed and based on Design Development documents approved in writing by University (or applicable Design Package(s)) and any written adjustments in the scope or quality of the Project or in the Construction Budget, Design Professional shall prepare for approval by University, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project (or applicable Design Package(s)). The Construction Documents shall describe the quality, configuration, size and relationships of all components to be incorporated into the Project. The Construction Documents shall be consistent with the Project Program (including the gross and assignable floor areas), the Construction Budget and the Project Schedule (and all revisions and updates thereto).

**2.4.2** Design Professional shall submit a tabulation comparing both gross and assignable floor areas to the Design Development Phase area requirements.

**2.4.3** The Drawings and Specifications shall be consistent with the University's General Conditions (Exhibit A) and the Division 1 tailored for the Project, as required by subparagraph 2.4.5.

**2.4.4** Design Professional shall submit construction documents for the Design Packages to University for review and approval upon 50% completion, and upon Design Professional's determination that the documents are 100% complete and coordinated. Design Professional shall resubmit the documents for backcheck by University after corrections are made to the 100% submittal.

**2.4.5** Prior to submission of the 50% completed Construction Documents for University review (or applicable Design Packages), Design Professional and Design Professional's consultants shall review University's Bidding Documents for requirements of the Project (or applicable Design Packages) and recommend any changes needed to make them applicable to the Project. Design Professional shall submit, with the review set of the 50% completed Construction Documents (for the applicable Design Package(s)), a single marked-up set of University Facility's Specifications, Division 1, General Requirements, showing the recommended changes.

**2.4.6** Upon 50% and 100% completion of the Construction Documents for Design Package(s), Design Professional shall submit for University review and comment { } copies each of the Construction Documents (for the applicable Design Package(s)), a summary of the calculations for the structural, HVAC electrical, plumbing, communications, (as applicable) and other specialized building system calculations.

**2.4.7** Upon 50%, 100% and final backcheck completion of the Construction Documents for the applicable Design Package(s), Design Professional shall prepare and submit for University approval { } copies of Design Professional's then current Estimated Project Construction Cost. The estimate shall be submitted in the form as required in Exhibit C.

#### **2.4.8**

**2.4.9** The Construction Documents submittals shall either incorporate any changes or corrections required by University or review agencies as a result of their review of the 50% and 100% completed Construction Documents (for the applicable Design Package(s)), or be accompanied by a written statement as to why such changes were not incorporated. University may reject Design Professional's explanation and require Design Professional to make the changes or corrections to the Construction Documents (for the applicable Design Package(s)) as previously requested by University.

**2.4.10** Unless directed otherwise in writing by University the Construction Document Phase shall not be considered 100% complete until all required agency and University approvals have been received by Design Professional. Design Professional shall prepare and submit required agency applications as required by Exhibit D.

**2.4.11** Upon 100% completion of the Construction Documents, Design Professional shall provide a complete listing of all rooms and spaces, as required in Format for Listing Rooms and Spaces (Exhibit E).

**2.4.12** Final Construction Drawings and the Certification page of the specifications submitted to University for bidding purposes shall be signed and stamped by Design Professional or the appropriate Design Professional's consultant.

**2.4.13** Design Professional shall be responsible for the content of all Construction Documents. All Construction Documents prepared or signed by Design Professional or Design Professional's consultants shall be complete, coordinated (including without limitation coordinated with Construction Documents prepared for previous portions of the Project) and contain directions as will enable a competent contractor to carry them out.

**2.4.14** Design Professional shall submit for University review and comment { } copies of the final (100%-completed) Construction Documents for all Design Package(s)

**2.4.15** When all University and review agency required changes or corrections have been incorporated by Design Professional, the 100%-completed Construction Documents for the applicable Design Package(s) will be deemed to be final and ready for bid. Design Professional shall provide to University one (1) set of Mylar reproducible, {NUMBER}, {set OR sets} of prints, and the complete set of the Specifications, of the final (100% backchecked and corrected) set of Construction Documents for the applicable Design Package(s). The Specifications shall be submitted in both hard copy form and on computer disk. {FACILITY TO INSERT APPROPRIATE COMPUTER DISK FORMAT: i.e., computer disk format shall be WordPerfect 5.2.}

#### **2.4.16**

**2.4.17** If the Estimated Project Construction Cost at the Construction Documents Phase for any Bid Package exceeds the Construction Budget for the Bid Package, University may, at its discretion, (1) give written approval of an increase in the Construction Budget, (2) authorize the solicitation of bids (reserving its rights under subparagraph 2.5.4), or (3) require Design Professional, at Design Professional's expense, to revise the design and corresponding Construction Documents for the Bid Package and/or the design and corresponding Construction Documents or Design Package(s) (if then existing) for other portions of the Project, in cooperation with University, so as to reduce the Estimated Project Construction Cost for the entire Project (including the Bid Package) to match the Construction Budget for the entire Project.

## **2.5 BIDDING PHASES OF THE WORK**

**2.5.1** If prequalification of CM/Contractors is required by University, Design Professional shall review and comment on the prequalification criteria prepared by the University.

**2.5.2** There will be multiple Bid Packages for the Project. Multiple Bid Packages may be assembled and bid concurrently as a portion of the Project. Portions of the Project will be bid separately from other portions. During bidding of each Bid Package, Design Professional shall assist University in document clarification and in the preparation of Addenda as required for issuance only by University in accordance with both the Instructions To Bidders and the Supplementary Instructions To Bidders of University's Bidding Documents. Design Professional's Project Architect or Engineer shall attend all scheduled pre-bid conferences and jobsite visits.

**2.5.3** Design Professional's Project Architect or Engineer shall assist University in the review and evaluation of bids if requested by University.

**2.5.4** If the lowest responsive bid for a Bid Package exceeds the Construction Budget for the Bid Package by more than 10%, University may, at its discretion, (1) authorize rebidding of the Bid Package within a reasonable period of time; or (2) require Design Professional, at Design Professional's expense, to modify the design and the corresponding Construction Documents or Design Package(s) for Bid Package, in order to reduce the Estimated Project Construction Cost for the Bid

Package to a level that falls within the Construction Budget for the Bid Package; or (3) award the Bid Package; reduce the Construction Budget for Bid Packages to be bid at a later time by an amount commensurate with the amount by which the lowest responsive bid exceeds the Construction Budget for the Work of the Bid Package; and require Design Professional, at Design Professional's expense, to modify the design and corresponding Construction Documents to be included in Bid Packages to be bid later in time so that the Estimated Project Construction Cost for such Bid Packages is consistent with the reduced Construction Budget. Modifications proposed by Design Professional shall require University approval prior to incorporation into the revised documents.

## **2.6 CONSTRUCTION PHASE**

**2.6.1** The Construction Phase will commence on the date established by the Agreement between University and CM/Contractor, and will terminate one year after Notice of Completion or, in the absence of a Notice of Completion, one year after Final Completion, of the entire Work.

**2.6.2** Design Professional shall attend and participate in all pre-construction meetings called by the University's Representative. Pre-construction meetings may be held prior to commencement of separate portions of the Project. Attendees shall be Design Professional's consultants, CM/Contractor and major subcontractors, University's Designated Administrator and others as deemed necessary by the University.

**2.6.3** The Design Professional's responsibilities shall include, but not be limited to, interpretation of the Contract Documents; periodic site observations; review of submittals; review of the Project Schedule (and all proposed updates and revisions thereto); providing comments to the University's Representative regarding Design Professional's ability to undertake its responsibilities pursuant to this Agreement within the time provided in proposed revisions and updates to the Project Schedule; providing cost or schedule analysis for field or change orders; preparation of documents for proposed changes; review of and making recommendations regarding approval of CM/Contractor cost, schedule or application for payment data; and general consultation to the University on design matters. All responsibilities of the Design Professional pursuant to this Agreement, including but not limited to services provided during the Construction Phase, shall be undertaken in conformance with the Project Schedule (and all revisions and updates thereto). Design Professional shall employ and assign adequate professional staff and subconsultants to ensure its ability to perform services in accordance with the Project Schedule (and all proposed revisions and updates thereto). The Design Professional shall be fully responsible for all matters related to the Design Professional's design and all of the Design Professional's recommendations to the University which are carried out by the University without substantive change. The Design Professional's duties shall not include administration of communications with CM/Contractor, chairing meetings with CM/Contractor; monitoring the compliance of other parties with the Project Schedule; negotiation of price changes; and coordination of closeout. Design Professional shall cooperate with the University's Representative in the University Representative's provision of contract administration services as those services are described in the Contract Documents.

Except as otherwise provided in the Contract Documents or as directed by University, all written communications with CM/Contractor shall be sent and received by University's Representative. The Design Professional shall advise and consult with University Representative and shall keep University Representative informed of the observed progress of the Work. The Design Professional shall render written or graphic interpretations and decisions that are consistent with the intent of, and reasonably inferable from, the Contract Documents; review and recommend any action to be taken regarding CM/Contractor's required submittals; and evaluate, with the University's Representative, the equivalence of proposed substitutions for materials, products, or services specified by brand or trade names in the Contract Documents and recommend either approval or rejection of substitutions as being equal in quality, utility, and appearance. Such services shall be performed in accordance with the requirements of the Project Schedule (and all proposed revisions and updates thereto).

The Design Professional shall perform all Construction Phase services in a timely manner, as required by the Project Schedule (and all revisions and updates thereto), this Agreement and the Contract Documents. Design Professional shall employ and assign adequate professional staff and subconsultants to ensure that its interpretations, decisions, reviews, or other functions pursuant to this Agreement do not cause or contribute to a disruption of construction or a delay in completion of the Project.

**2.6.4** Design Professional shall, at no cost to University, satisfactorily correct any and all errors, omissions, deficiencies, or conflicts in the Construction Documents prepared by Design Professional or Design Professional's consultants promptly upon discovery or notice. The obligations of Design Professional to correct defective or nonconforming Work shall not in any way limit any other obligations of Design Professional.

## **2.7 CONTRACT DOCUMENTS COMPLIANCE**

**2.7.1** Design Professional shall make (1) periodic on-site observations of construction as it progresses except for periods of construction downtime as approved by University in writing, and upon completion of construction and (2) off-site observations of fabricated materials and equipment when such off-site checks are specified in the Contract Documents. Observations shall be conducted deliberately and thoroughly. The frequency, duration, and extent of such observations shall be appropriate to and for: the progress, character, and complexity of the Work; design issues or questions of concern to Design Professional, its consultants, University's Representative or as noted in any inspection reports furnished to Design Professional; the observed quality of CM/Contractor's performance during previous visits; the review of construction of crucial components of the Work; and the observation of the performance of specified or University's Representative's directed tests significant to the acceptability of crucial components of the Work. Such observations shall also be performed when reasonably requested by University.

Observations shall be for the purpose of ascertaining: the progress of the Work; that the character, scope, quality and detail of construction (including workmanship and materials) comply with the design expressed in the Contract Documents, University's Representative's directives, approved product data

and samples and clarification drawings. Observations shall be separate from any inspections which may be provided by University. University's provision of inspection services, if any, shall not relieve Design Professional of its responsibilities under this Agreement.

**2.7.2** Design Professional shall have the authority to recommend rejection of Work that does not conform to any of the following: the Contract Documents; Design Professional's directives; applicable code requirements; approved Shop Drawings, Product Data, and Samples; Clarification Drawings; or defective Work. Such recommendation for rejection will be transmitted to the University's Representative in writing for communication to CM/Contractor.

The Design Professional shall recommend special inspection or testing of the Work in accordance with the provisions of the Contract Documents if, in Design Professional's reasonable opinion, such inspection or testing is necessary or advisable for the implementation of the Contract Documents, regardless of the state of completion of the Work subject to such inspection or testing.

**2.7.3** The Design Professional shall review inspection reports, laboratory reports, and test data to determine conformity of such data with the design requirements expressed, implied, or depicted in the Contract Documents; approved Shop Drawings, Product Data, and Samples; and Clarification Drawings.

The Design Professional shall also recommend to the University's Representative, in writing, actions that need to be taken by University's Representative, as determined from Design Professional Project site visits, inspection reports, laboratory reports, and test data or from CM/Contractor proposals, or other relevant documents.

**2.7.4** Design Professional shall attend regular construction meetings scheduled to occur **{INSERT MEETING FREQUENCY}**, plus special meetings as they are deemed necessary. If, through no fault of Design Professional, the total number of regular construction meetings attended exceeds **{ }** meetings, Design Professional shall be compensated for additional meetings in accordance with paragraph 5.2. Construction meeting notes shall be prepared and distributed by University's Representative.

**2.7.5** Design Professional shall accompany and assist University Representative and University with punch list inspections to determine Beneficial Occupancy, Substantial Completion, and Final Completion. Design Professional shall advise on the issuance of the Certificate of Beneficial Occupancy and the Certificate of Substantial Completion in accordance with the Construction Contract Documents.

## **2.8 INTERPRETATION OF THE CONTRACT DOCUMENTS**

**2.8.1** The Design Professional shall be, in the first instance, the interpreter of the design requirements of the Contract Documents and the judge of the performance thereunder.

Design Professional shall render design interpretations of, and design decisions regarding, the Construction Contract Documents that are necessary for the proper execution or progress of the Work including provision of clarifications and interpretations of the Construction Contract Documents that

are consistent with the intent of the documents but which do not involve a change in the scope of the Work. Such clarifications and interpretations shall not involve an adjustment of the Contract Sum or an extension of the Contract Time.

**2.8.2** Design Professional shall not be responsible for construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Work, unless Design Professional specifies, directs, recommends or approves such means, methods, techniques, sequences, procedures, or safety precautions/programs.

## 2.9 CHANGES TO THE CONTRACT DOCUMENTS

**2.9.1** Design Professional shall prepare drawings and specifications needed by University Representative to issue Field Orders and Change Orders for University's approval and execution.

## 2.10 RECORD DOCUMENTS

**2.10.1** Record Documents shall consist of Record Drawings and final Specifications.

**2.10.2** Within 60 days after Final Completion, Design Professional shall, at no additional cost, furnish University with one (1) {Mylar or CAD} copy of the Record Drawings and one (1) annotated hard copy of the Specifications and one (1) computer disk compatible with {SPECIFY, e.g. WordPerfect 5.2}. The Record Drawings shall be made from the As-built Drawings, including revisions and changes made via Addenda and, during the course of construction, via marked-up prints, As-built Drawings and other data furnished by CM/Contractor to Design Professional. These revisions and changes shall be accurately annotated and cross-referenced. Each page of the Drawings shall prominently note the words "Record Documents." The cover page of the annotated Specifications shall also note the words "Record Documents."

## 2.11 GUARANTEE TO REPAIR PERIOD

**2.11.1** Design Professional shall review the Work at 11 months after Substantial Completion or Final Completion, as applicable, and shall make written recommendations to University for the correction of any deficiencies within { } days after the inspection date. Design Professional shall be accompanied by University during these inspections. Dates for inspections shall be as mutually agreed by the parties within the 11th month time frame. The number of work hours associated with the on-site review and preparation of written recommendations shall not exceed { } hours excluding review and preparation necessitated in whole or in part by Design Professional's errors and omissions.

## 2.12 INDEPENDENT REVIEWS

2.12.1  
2.12.2{

**2.12.3** This Project is subject to an independent seismic/structure review conducted by University and at

University expense. Design Professional shall attend meetings as necessary to resolve all seismic issues. Design Professional shall present Drawings and other items as necessary to describe the Project design.

## 2.13 VALUE ENGINEERING

2.13.1 }  
2.13.2 }  
2.13.3 }

## 2.14 SCHEDULE

**2.14.1** Design Professional acknowledges that all time limits and scheduling requirements stated in this Agreement are of the utmost importance to University. Design Professional shall comply with all time requirements of the Project Schedule, (and all revisions and updates thereto). The Project Schedule shall be revised and updated from time to time by the University and then provided in revised or updated form to the Design Professional by the University. The Project Schedule shall include time requirements for completion of Design Professional's services. Design Professional shall be obligated to participate in the development of the Project Schedule in the manner set forth in this Agreement, shall be provided an opportunity to comment upon and propose revisions to the Project Schedule prior to release and/or publication of the Project Schedule, and shall be provided an opportunity to comment upon and propose changes to all revisions of and updates to the Project Schedule prior to release and/or publication thereof. Design Professional's failure to comply with the Project Schedule (and all revisions and updates thereto) may cause economic damages to the University including but not limited to claims by the CM/Contractor to be compensated for delays in construction of the Project, claims by the CM/Contractor for acceleration of construction to compensate for delays caused by the Design Professional, and damages incurred by the University as a result of its inability to use the Project in the manner and within the time anticipated by the University.

**2.14.2** Design Professional shall submit its proposed work plan for the performance of Design Professional's services within { } calendar days following the later of (1) the execution date of this Agreement, or (2) the date on which University authorizes Design Professional to begin performing Schematic Design Phase services. Design Professional's work plan shall include without limitation, a schedule for how Design Professional will comply with Project Schedule. The University will consider Design Professional's proposed work plan in preparing revisions and updates to the Project Schedule. Design Professional shall regularly provide information to the University regarding Design concerning its ability to comply with the Project Schedule (and any proposed revisions or updates thereto), and shall revise its work plan to conform to each revision of and/or update to the Project Schedule.

Design Professional's work plan shall include allowances for the periods of time required for University's review and approval of submissions and for approvals by authorities having jurisdiction over the Project.

## **ARTICLE 3 - DESIGN PROFESSIONAL'S SERVICES AND RESPONSIBILITIES-ADDITIONAL SERVICES**

Unless required to be performed as part of basic services, the services described in this Article 3 are additional services. These Additional Services shall be paid for by University, as provided in this Agreement, in addition to the compensation for Basic Services. Design Professional shall provide Additional Services only when and as authorized in a written Agreement Change Authorization signed by University. No Additional Services shall be compensable unless so authorized.

### **3.1 PRE-CONSTRUCTION PHASES**

**3.1.1** Provide analyses of University's need and formal programming documentation of the requirements of the Project.

**3.1.2** Provide planning surveys, site evaluations, environmental studies, or comparative studies of prospective Project sites.

**3.1.3** Provide services to investigate existing conditions or facilities, to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by University beyond those reasonably and customarily provided in Basic Services except that additional information recommended by the Design Professional in accordance with subparagraph 2.1.9 shall not entitle Design Professional to additional compensation.

**3.1.4** Provide planning services for tenant or rental spaces.

**3.1.5** Provide financial feasibility studies or other special studies.

**3.1.6** Prepare special surveys, environmental studies, and submissions required for review or approval by governmental authorities or others having jurisdiction over the Project except submittals required for approval of the Construction Documents and as required to prepare Change Orders under basic services as stipulated in subparagraph 2.9.2, if applicable.

**3.1.7** Prepare revisions to the documents during the Schematic Design, Design Development, Construction Documents, Bidding, and Construction Phases when these revisions are inconsistent with data or written approvals previously given by University, excluding (1) corrections of design errors or omissions, and (2) modifications of the Construction Documents in accordance with paragraphs 2.4, 2.5, 2.12 and 2.13 herein.

**3.1.8** Provide services related to future facilities, systems and equipment that are not intended to be constructed during the construction period or that are not anticipated in the Project Program.

**3.1.9** Provide interior design and similar services required for or in connection with the selection, procurement, or installation of furniture, furnishings and related equipment that are not included in the Construction Documents.

**3.1.10** Provide detailed quantity surveys or inventories of material, equipment, and labor.

**3.1.11** Make investigations or take inventories of materials or equipment, or make valuations and detailed appraisals of existing facilities.

**3.1.12** Provide analyses of owning and operating costs, except as needed to prepare the energy analysis required by subparagraph 2.4.4 herein or to participate in Value Engineering sessions as required by paragraph 2.13.

**3.1.13** Provide perspective drawings, models, and mock-ups, including slides thereof except as indicated in subparagraph 2.2.9 for Regents presentation.

### **3.2 CONSTRUCTION PHASE**

#### **3.2.1**

### **3.3 POST-CONSTRUCTION**

**3.3.1** Provide services as necessary to correct major defects or deficiencies in the Work of CM/Contractor when such defects or deficiencies require services in excess of those reasonably expected on a project of this type, size and complexity, excluding warranty items, provided that such defects or deficiencies are not caused in whole or in part by errors or omissions on the part of the Design Professional.

**3.3.2** Provide extensive assistance in the utilization of any equipment or system; prepare operation and maintenance manuals; train personnel for operation and maintenance; and consult during operation.

**3.3.3** Provide services after the issuance of the final Certificate For Payment provided that these services do not relate to the guarantee or warranty services described in paragraph 2.11 or to corrections of design errors or omissions.

**3.3.4** Provide services regarding replacement of any Work damaged by fire or other cause (excluding any cause resulting from the negligent acts, errors, or omissions by Design Professional).

### **3.4 GENERAL**

**3.4.1** Provide services in connection with a public hearing, mediation, arbitration proceeding, or legal proceeding, except where Design Professional is party thereto.

**3.4.2** Provide services made necessary by the termination of CM/Contractor but only to the extent such services exceed the level of service that would have been provided in the absence of a termination of CM/Contractor.

## **ARTICLE 4 - UNIVERSITY RIGHTS AND RESPONSIBILITIES**

### **4.1 ADMINISTRATION**

**4.1.1** University shall designate, in writing, an Administrator who will act on behalf of University with respect to this Agreement. Design Professional shall accept directives only from University's Designated Administrator and not from other University employees or consultants. University may replace University's Designated Administrator at its sole option; if this replacement is made, University shall notify Design Professional in writing.

4.1.2 University shall designate, in writing, prior to bidding, a University Representative.

## 4.2 PROVISION OF INFORMATION, SURVEYS, AND REPORTS

4.2.1 University has furnished the exhibits set forth in paragraph 12.2.1, which are hereby incorporated and made a part of this Agreement.

4.2.2 University shall have the right to make changes to the Project Program (Exhibit H). When such changes increase the duties of Design Professional beyond those reasonably and customarily provided in Basic Services, Design Professional shall be compensated in accordance with this Agreement.

4.2.3 University shall have the right to make reasonable changes to its Bidding Documents and Design Professional shall be bound by such changes. When such changes increase the duties of Design Professional, beyond those reasonably and customarily provided in Basic Services, Design Professional shall be compensated in accordance with this Agreement.

4.2.4 University shall furnish structural, mechanical, electrical, chemical, soils, and other tests, inspections, and reports as required by law or by the Contract Documents, which are not required to be furnished by CM/Contractor under the Contract Documents.

4.2.5 University shall revise and update the Project Schedule as dates and durations applicable to the Project such as funding deadlines, review periods, anticipated periods of Project suspension, and construction deadlines become known. Design Professional shall comply with all time requirements for work of the Design Professional that are set forth in the Project Schedule (and revisions and updates thereto).

4.2.6 If required for the performance of Design Professional's services, University shall furnish an accurate land survey of the Project site, giving, as applicable, grades and lines of streets, alleys, pavements, and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site; locations, dimensions, and floor elevations pertaining to existing buildings, other improvements, and trees; and information in University's possession concerning available service and utility lines, both public and private.

4.2.7 University shall furnish geotechnical data when these data are reasonably deemed necessary by Design Professional, including test logs, soil classifications, soil bearing values, and other data necessary to define subsoil conditions.

4.2.8 The format to be used by Design Professional in its preparation of the Specifications shall be as stipulated in Supplemental Requirements (Exhibit C).

4.2.9 The services, information, surveys, and reports required by this Article 4 shall be furnished at University's expense.

## ARTICLE 5- COMPENSATION

University will compensate Design Professional for the scope of services provided, in accordance with this Article 5 and with the other terms and conditions of this Agreement, as follows:

### 5.1 COMPENSATION FOR BASIC SERVICES

5.1.1 The fee for Basic Services shall be computed as follows:

For services rendered in accordance with this Agreement, the basis for compensation shall be a lump-sum fee in the amount of  $\$ \{ \}$ , payable upon completion of each Project phase, after the review and approval by University, in accordance with the following rate schedule. Services required by the Design Development Phase and the Construction Documents Phase shall only be performed, and University will only be obligated to compensate the Design Professional therefore, if University has issued a notice to proceed under paragraphs 2.3.1 and 2.3.2:

<u>Phase or Stage Completed</u>	<u>Rates of Portions of Total Fees to be Paid at Completion</u>
Schematic Design Phase	{ %}
Design Development Phase	Increase to { %}
Construction Documents Phase	Increase to { %}
Bidding Phase (Award of Bid Packages)	Increase to { %} (or a proportional percentage when a portion of the Project is awarded)
Construction Phase	(Proportional monthly payments of { %} the fee, prorated to the proportion of the Project construction that is certified as complete)
Construction Completed	Increase to { %}
Receipt of Design Professional's Record Documents	Increase to { %}
Guarantee to Repair Period Services Completed	Increase to 100%

### 5.2 COMPENSATION FOR ADDITIONAL SERVICES

5.2.1 For the Additional Services of Design Professional, as described in Article 3, including the Additional Services of consultants, compensation shall be in accordance with the attached Rate Schedule, Exhibit B.

5.2.2 If the Contract Time initially established in the Contract Documents is exceeded or extended by  $\{ \}$  calendar days through the fault of University or CM/Contractor and through no fault of Design Professional, compensation for any Basic Services provided during this extended period of the construction period of the construction contract shall be adjusted to compensate Design Professional for any additional costs reasonably incurred by Design Professional as the result

of such delay, provided University has approved such adjustments in advance. These extended Basic Services shall be approved, in writing, by University and shall not include Basic Services that would have been performed under this Agreement had the initial Contract Time not been substantially exceeded or extended.

### **5.3 REIMBURSABLE EXPENSES**

**5.3.1** For Reimbursable Expenses, as described in this paragraph 5.3, only actual costs plus a 10% handling fee will be reimbursed. Paid invoices or other proof of payment shall be submitted when requesting reimbursement.

**5.3.2** Reimbursable Expenses are paid in addition to the compensation for Basic and Additional Services and are actual expenditures made by Design Professional and Design Professional's consultants in the interest of the Project, for the following expenses:

.1 Transportation and living expenses while traveling outside the (NAME OF REGION) area. Transportation, lodging, and per diem expenses for travel between Design Professional's offices and the consultants' offices and between Design Professional's and consultants' offices and University's facility are not reimbursable. Transportation expenses shall be paid on the same basis and shall be subject to the same conditions as those in effect for employees of University, pursuant to Transportation, Per Diem, and Mileage Reimbursement Schedule (Exhibit G). These expenses shall not be compensable unless authorized, in writing, in advance by University.

.2 Expenses for reproductions, long distance communications (including modem linkage) between University and Design Professional, postage, handling and delivery for Drawings, Specifications, and other documents, excluding reproductions for office use by Design Professional and Design Professional's consultants; copies specified herein for the Schematic Design, Design Development, Construction Documents and Bidding Phases; and other sets as required under Basic Services (Article 2).

## **ARTICLE 6 - PAYMENTS**

### **6.1 PAYMENTS FOR BASIC SERVICES**

**6.1.1** Payments for Basic Services, as defined in Article 2, shall be made as stipulated in subparagraph 5.1.1.

### **6.2 PAYMENTS FOR ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES**

**6.2.1** Payments for Design Professional's Additional Services, as defined in Article 3, and for Reimbursable Expenses, as defined in paragraph 5.3, shall be made monthly after presentation of Design Professional's statement of services rendered, or expenses incurred, with invoices, receipts and other justification thereof.

**6.2.2** Payments related to paragraph 5.2.2 shall be made monthly after presentation of Design Professional's statement of services rendered, or expenses incurred, with invoices,

receipts and other justification thereof unless otherwise agreed by the parties thereto.

### **6.3 PROJECT SUSPENSION**

**6.3.1** If the Project is suspended or abandoned for more than { } consecutive months, and such suspension was not scheduled at the beginning of the Project, as provided under subparagraph 4.2.5, Design Professional shall be compensated for all authorized services performed prior to the receipt of written notice from University of such suspension or abandonment, together with Reimbursable Expenses then due. If the Project is resumed after being suspended for more than { } consecutive months, Design Professional's compensation shall be adjusted as mutually agreed to compensate Design Professional for any additional costs reasonably incurred as the result of the suspension.

## **ARTICLE 7 - DESIGN PROFESSIONAL'S RECORDS AND FILES**

### **7.1 MAINTAINING BOOKS AND RECORDS**

Books and records relating to this Agreement shall be maintained in accordance with generally accepted accounting principles. University or University's authorized representative shall have access to, the right to audit and the right to copy pertinent parts of Consultants' books and records. Consultants records shall include but not be limited to accounting records (hard copy, as well as computer readable data); contracts; payroll records; subconsultant agreements; vendor agreements; purchase orders; leases; original estimates; estimating work sheets; correspondence; receipts; memoranda; and any other supporting evidence deemed necessary to substantiate charges under this agreement. All such books and records shall be preserved for a period of at least 3 years from the date of Final Payment under this Agreement.

### **7.2 AVAILABILITY OF BOOKS AND RECORDS**

Design Professional and Design Professional's consultants shall make their files available for inspection and copying by University upon reasonable notice. Such files shall be maintained for a period of at least 3 years from the date of Final Payment under this Agreement. Design Professional shall include appropriate language in consultant's agreements to enforce the provision of this paragraph 7.2.

## **ARTICLE 8 - OWNERSHIP AND USE OF DOCUMENTS**

### **8.1 DRAWINGS, SPECIFICATIONS, AND PRESENTATION MATERIALS**

**8.1.1** Drawings and Specifications shall become the property of University, whether or not the Project for which they are made is executed. Design Professional shall be permitted to retain copies, including reproducible copies, of the Drawings and Specifications for information and reference except as provided in paragraph 8.2. Neither University nor Design Professional shall use the Drawings and Specifications as a whole or in substantial part on other projects, but either may reuse details of the Drawings for other projects.

**8.1.2** All presentation drawings, slides, and models shall become and remain the property of University.

## 8.2 CONSTRUCTION DOCUMENTS

**8.2.1** Design Professional, upon request, shall provide copies of the Construction Documents in the number required by University for bidding and construction purposes; the reproduction expense shall be borne by University. University reserves the right to select the type of document reproduction and to establish where the reproduction will be accomplished.

**8.2.2** University may use the Construction Documents, without Design Professional's consent, on in connection with the Project, including without limitation, future additions, alterations, connections, repairs, information, reference, use, or occupancy.

**8.2.3** Except as provided in subparagraphs 8.2.1 and 8.2.2 University will not use the Construction Documents for another project without Design Professional's written consent.

## ARTICLE 9 - DISPUTES

### 9.1 NEGOTIATION

**9.1.1** The parties will attempt in good faith to resolve any controversy or Claim arising out of or relating to this Agreement by negotiation.

### 9.2 MEDIATION

**9.2.1** Within 60 days, but no earlier than 30 days, following the earlier of (1) receipt of notice by the other party from the American Arbitration Association (AAA) of the disputing party's demand for arbitration or (2) receipt by the other party of the disputing party's notice of election to litigate, the parties shall submit the matter to non-binding mediation administered by the AAA under its construction industry mediation rules, unless waived by mutual stipulation of both parties.

### 9.3 ARBITRATION OR LITIGATION

Disputes arising from this Agreement between Design Professional and University which cannot be settled through negotiation or mediation shall be subject to arbitration or litigation as follows

**9.3.1** *Arbitration with CM/Contractor.* If any claim arises under the Construction Contract Documents for the Project and is submitted to arbitration, and either CM/Contractor or University claims that the acts or omissions of Design Professional are involved, in whole or in part, any claim by University against Design Professional arising out of or in connection therewith may be asserted, at the option of University, against Design Professional in the same arbitration proceeding which shall be conducted under the procedures specified in the General Conditions of the construction contract.

**9.3.2** *Litigation with CM/Contractor.* If any claim arises under the Construction Contract Documents for the Project and is submitted to litigation, and either CM/Contractor or University claims that the acts or omissions of Design Professional are involved, in whole or in part, any claim by University against Design Professional arising out of or in connection therewith may be asserted, at the option of University, against Design Professional in the same litigation.

**9.3.3** *Arbitration without CM/Contractor.* Disputes arising from this Agreement between Design Professional and University which cannot be settled through negotiation or mediation, and which are not resolved by arbitration or litigation pursuant to subparagraphs 9.3.1. and 9.3.2 shall be subject to arbitration without CM/Contractor conducted in accordance with the Construction Industry Arbitration Rules of the AAA then in effect (except as otherwise provided in this Agreement). The following additional modifications shall be made to the aforesaid Rules of the AAA:

- .1 Civil discovery shall be permitted for the production of documents and taking of depositions. Other discovery may be permitted in the discretion of the arbitrator. All disputes regarding discovery shall be decided by the arbitrator.
- .2 University's Representative and/or University's consultants, shall if required by agreement with University, upon demand by University, join in and be bound by the arbitration.
- .3 Concurrent disputes subject to this subparagraph 9.3.3 shall be consolidated into a single arbitration unless the parties otherwise agree in writing.
- .4 No hearing shall be held prior to final completion of the Project unless University and Design Professional otherwise agree in writing.
- .5 The exclusive forum for determining arbitrability shall be the Superior Court of the State of California.
- .6 If total claims are less than \$50,000, AAA expedited procedures as modified by this Article 9 shall apply. If total claims are between \$50,000 and \$100,000 they shall be heard by a single arbitrator who shall be an attorney. If total claims are in excess of \$100,000 and are submitted to arbitration, the controversy shall be heard by a panel of 3 arbitrators, one of whom shall be an attorney.
- .7 The AAA shall submit simultaneously to each party to the dispute an identical list of at least 10 names of persons chosen from the National Panel of Commercial Arbitrators, and each party to the dispute shall have 10 days from the date of receipt in which to cross off any names objected to, number the remaining names in order of preference and return the list to AAA. If the expedited procedures of the AAA are applicable, the AAA shall submit simultaneously to each party an identical list of 5 proposed arbitrators drawn from the National Panel of Commercial Arbitrators, and each party may strike 3 names from the list on a peremptory basis and return the list to AAA within 10 days from the date of receipt.

Unless University and Design Professional otherwise agree in writing, the arbitration decision shall be made under and in accordance with the laws of the State of California, supported by substantial evidence. If the total of all claims or cross claims submitted to arbitration is in excess of \$50,000, the

award shall contain the basis for the decision, findings of fact, and conclusions of law.

Any arbitration award shall be subject to confirmation, vacation or correction under the procedures and on the grounds specified in the California Code of Civil Procedure including without limitation Section 1296.

The expenses and fees of the arbitrators and the administrative fees of the AAA shall be divided among the parties equally. Each party shall pay its own counsel fees, witness fees, and other expenses incurred for its own benefit.

The University may offset against the outstanding contract balance the amount of the University's own affirmative claims against the Design Professional provided such claims are based upon alleged breaches of this Agreement or alleged failure to conform to the professional standard care set forth in Article 1.2 of this Agreement. The University shall inform the Design Professional in writing of its intention to offset on or before exercising its right to offset under this Agreement. Within three days following receipt of such written notice, the Design Professional may elect to submit the issue of the University's intention to offset to non-binding mediation administered by the AAA. Such mediation shall take place not less than {NUMBER} days and not more than {NUMBER} days following the date that the University receives notice of Design Professional's election to mediate regarding the University's intention to offset. The University's obligation to pay any outstanding contract balance shall be stayed and tolled until the first business day following the date of the mediation concerning the University's intention to offset. If the University decides to exercise its right to offset following mediation regarding the University's intention to offset, notice of such offset shall be given to Design Professional by University in writing. If Design Professional does not demand mediation concerning the University's intention to offset, then the University's notice of its intention to offset shall be deemed notice of the decision to offset by the University. Irrespective of whether Design Professional elects to mediate the issue of the University intention to offset, Design Professional may dispute the University's decision to offset by demanding arbitration or commencing litigation pursuant to the terms of Article 9.

#### **9.4 PERSONAL INJURY, WRONGFUL DEATH OR PROPERTY DAMAGE**

9.4.1 Claims for personal injury, wrongful death, or property damage (other than property damage to University) shall not be subject to arbitration under Paragraph 9.3.3.

### **ARTICLE 10 - INDEMNIFICATION AND INSURANCE**

#### **10.1 INDEMNIFICATION**

10.1.1 Design Professional shall indemnify, defend, and hold harmless University and its Regents, officers, employees, agents, and representatives (collectively, "Indemnitee"), against all liability, demands, claims, costs, damages, injury including death, settlements, and expenses (including without limitation, interest and penalties) incurred by Indemnitee ("Losses") arising out of the performance of services or Design Professional's other obligations under this Agreement, but only in proportion to and to the extent such Losses are caused by or result from (1) the negligent acts or omissions of Design

Professional, its officers, agents, employees, subcontractors, consultants, or any person or entity for whom Design Professional is responsible (collectively, "Indemnitor"); (2) the breach by Indemnitor of any of the provisions of this Agreement; or (3) willful misconduct by Indemnitor.

10.1.2 The indemnification obligations under this Article 10 shall not be limited by any assertion or finding that (1) the person or entity indemnified is liable by reason of non-delegable duty, or (2) the Losses were caused in part by the negligence of, breach of contract by, or violation of law by Indemnitee. The obligation to defend shall arise regardless of any claim or assertion that Indemnitee caused or contributed to the Losses. Indemnitor's reasonable defense costs (including attorney and expert fees) incurred in providing a defense for Indemnitees shall be reimbursed by University except to the extent such defense costs arise, under principles of comparative fault, from Indemnitor's (a) negligent acts or omissions; (b) breach of any of the provisions of this Agreement; or (c) willful misconduct.

10.1.3 Design Professional shall indemnify, defend, and save harmless Indemnitee from and against all loss, cost, expense, royalties, claims for damages or liability, in law or in equity, including, without limitation, attorney's fees, court costs, and other litigation expenses that may at any time arise or be set up for any infringement (or alleged infringement) of any patent, copyright, trade secret, trade name, trademark or any other proprietary right of any person or entity in consequence of the use on the Project by Indemnitee of the design or construction documents (including any method, process, product, concept specified or depicted) supplied by Indemnitor in the performance of this Agreement.

10.1.4 Nothing in this Agreement, including the provisions of this Article 10, shall constitute a waiver or limitation of any rights which Indemnitee may have under applicable law, including without limitation, the right to implied indemnity.

#### **10.2 INSURANCE REQUIREMENTS**

Design Professional, at Design Professional's sole cost and expense, shall insure its activities in connection with this Agreement and shall obtain, keep in force, and maintain insurance as listed below. The coverages required under Paragraph 10.2 shall not in any way limit the liability of Design Professional.

10.2.1 Either Comprehensive Form General Liability Insurance (Contractual, products, and completed operations coverages included) with a combined single limit of no less than {\$ } per occurrence, or Commercial-Form General Liability Insurance with coverage and minimum limits as follows:

- |    |  |       |
|----|--|-------|
| .1 | Each Occurrence                          | {\$ } |
| .2 | Products Completed, Operations Aggregate | {\$ } |
| .3 | Personal and Advertising Injury          | {\$ } |
| .4 | General Aggregate                        | {\$ } |

10.2.2 Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles, with a combined single limit of no less than {\$ } per accident.

**10.2.3** Professional Liability Insurance, with limits of { \$ } per claim and { \$ } in the aggregate.

**10.2.4** If the above insurance (subparagraphs 10.2.1-10.2.3) is written on a claims-made basis, it shall be maintained continuously for a period of no less than 3 years after the date of Final Completion. The insurance shall have a retroactive date of placement prior to or coinciding with the date services are first provided that are governed by the terms of this Agreement and shall include, without limitation coverage for professional services as called for in this Agreement. Insurance required by subparagraphs 10.2.1-10.2.3 shall be (i) issued by companies that have a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's) or (ii) guaranteed, under terms consented to by the University (such consent to not be unreasonably withheld), by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's).

**10.2.5** Workers' Compensation as required and under the Workers' Compensation Insurance and Safety Act of the State of California, as amended from time to time. Insurance required by this subparagraph 10.2.5 shall be issued by companies (i) that have a Best rating of B+ or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's) or (ii) that are acceptable to the University.

**10.2.6** Design Professional, upon the execution of this Agreement, shall furnish University with Certificate Of Insurance evidencing compliance with this Article 10, including the following requirements:

.1 Design Professional shall have the insurance company complete University's form, Certificate Of Insurance (Exhibit I). It alone constitutes evidence of insurance.

.2 Provide that coverage cannot be canceled without 10 days advance written notice to University.

.3 If insurance policies are canceled for non-payment, University reserves the right to maintain policies in effect by continuing to make the policy payments and assessing the cost of so maintaining the policies against Design Professional.

.4 The General Liability Insurance policy and the Business Automobile Liability Insurance policy shall name The Regents of the University of California as an Additional Insured. As respects Professional Liability include Contractual Liability Coverage or endorsements to the insurance policies for Contractual Liability Coverage.

.5 All insurance policies shall apply to the negligent acts, or omissions of Design Professional, its officers, agents, employees, and for Design Professional's legal responsibility for the negligent acts or omissions of its consultants and anyone directly or indirectly under the control, supervision, or employ of Design Professional or Design Professional's consultants.

## **ARTICLE 11 - STATUTORY REQUIREMENTS**

### **11.1 NONDISCRIMINATION**

**11.1.1** In connection with the performance of Design Professional pursuant to this Agreement, Design Professional will not willfully discriminate against any employee or qualified applicant for employment because of race, color, religion, ancestry, national origin, local custom, habit, sex, age, sexual orientation, physical disability, veteran's status, medical condition (as defined in Section 12926 of the California Government Code), marital status, or citizenship (within the limits imposed by law or by The Regents' policy). Design Professional will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, ancestry, national origin, local custom, habit, sex, age, sexual orientation, physical disability, veteran's status, medical condition (as defined in Section 12926 of the California Government Code), marital status, or citizenship (within the limits imposed by law or by The Regents' policy). This equal treatment shall apply, but shall not be limited to, the following: upgrade, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships.

### **11.2 PREVAILING WAGE RATES**

**11.2.1** For purposes of the Article, the term subcontractor or consultant shall not include suppliers, manufacturers, or distributors.

**11.2.2** Design Professional shall comply and shall ensure that all subcontractors or consultants comply with Section 1770, and the applicable sections that follow, including Section 1775 of the State of California Labor Code. References to "Covered Services" hereinafter shall mean services performed pursuant to this Agreement that are covered by the aforementioned provisions as implemented by the State of California Department of Industrial Relations.

**11.2.3** The State of California Department of Industrial Relations has ascertained the general prevailing per diem wage rates in the locality in which the Project is to be performed for each craft, classification, or type of worker required to perform the Covered Services hereunder. A schedule of the general prevailing per diem wage rates will be on file at University's principal facility office and will be made available to any interested party upon request. By this reference, such schedule is made part of the Agreement. Design Professional shall pay not less than the prevailing wage rates, as specified in the schedule and any amendments thereto, to all workers employed by Design Professional in the execution of the Covered Services hereunder. Design Professional shall cause all subcontracts or consultant agreements to include the provision that all subcontractors or consultants shall pay not less than the prevailing rates to all workers employed by such subcontractor or consultants in the execution of the Covered Services hereunder. Design Professional shall forfeit to University, as a penalty, not more than \$50 for each calendar day or portion thereof for each worker that is paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any portion of the Covered Services hereunder performed by Design Professional or any

subcontractor or consultant. The amount of this penalty shall be determined by the Labor Commissioner pursuant to applicable law. Such forfeiture amounts may be deducted from the Design Professional's fee. Design Professional shall also pay to any worker who was paid less than the prevailing wage rate for the work or craft for which the worker was employed for any portion of the Covered Services hereunder, for each day, or portion thereof, for which the worker was paid less than the specified prevailing per diem wage rate, an amount equal to the difference between the specified prevailing per diem wage rate and the amount which was paid to the worker.

### **11.3 PAYROLL RECORDS**

**11.3.1** Design Professional and all subcontractors or consultants shall keep an accurate payroll record, showing the name, address, social security number, job classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyworker, apprentice, or other employee employed in connection with the Covered Services hereunder. All payroll records shall be certified as being true and correct by Design Professional or subcontractors or consultants keeping such records; and the payroll records shall be available for inspection at all reasonable hours at the principal office of Design Professional on the following basis:

.1 A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or the employee's authorized representative on request.

.2 A certified copy of all payroll record shall be made available for inspection upon request to University, the State of California Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the State of California Division of Industrial Relations.

.3 A certified copy of all payroll records shall be made available upon request by the public for inspection or copies thereof made; provided, however, that the request by the public shall be made to either University, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal offices of Design Professional or subcontractors or consultants. Any copy of the records made available for inspection as copies and furnished upon request to the public or any public agency by University shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Design Professional awarded the Agreement or performing the Agreement shall not be marked or obliterated.

**11.3.2** Design Professional shall file a certified copy of the payroll records with the entity that requested the records within 10 days after receipt of a written request. Design Professional shall inform University of the location of such payroll records for the Project, including the street address, city, and county; and Design Professional shall, within 5 working days, provide notice of change of location of such records. In the event of noncompliance with the requirements of the Paragraph or with the State of California Labor Code Section 1776, Design Professional shall have 10 days in which to comply following

receipt of notice specifying in what respects Design Professional must comply. Should noncompliance still be evident after the 10-day period, Design Professional shall forfeit to University, as a penalty, \$25 for each day, or portion thereof, for each worker, until strict compliance is accomplished. Such forfeiture amounts may be deducted from the Design Professional's fee.

### **11.4 APPRENTICES**

**11.4.1** Only apprentices, as defined in the State of California Labor Code Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4, Division 3, of the State of California Labor Code, are eligible to be employed by Design Professional and subcontractors or consultants as apprentices for the Covered Services hereunder. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and written apprentice agreements under which the apprentice is training.

**11.4.2** Every apprentice shall be paid the standard wage to apprentices, under the regulations of the craft or trade at which the apprentice is employed, and shall be employed only for the Covered Services hereunder in the craft or trade to which the apprentice is indentured.

**11.4.3** When Design Professional or subcontractors or consultants employ workers in any apprenticeship craft or trade for the Covered Services hereunder, Design Professional or subcontractors or consultants shall apply to the joint apprenticeship committee, which administers the apprenticeship standards of the craft or trade in the area of the Project site, for a certificate approving Design Professional or subcontractors or consultants under the apprenticeship standards for the employment and training of apprentices in the area of the Project site. The committee will issue a certificate fixing the number of apprentices or the ratio of apprentices to journeyworkers who shall be employed in the craft or trade on the Covered Services hereunder. The ratio will not exceed that stipulated in the apprenticeship standards under which the joint apprenticeship committee operates; but in no case shall the ratio be less than 1 apprentice for each 5 journeyworkers, except as permitted by law. Design Professional or subcontractors or consultants shall, upon the issuance of the approval certificate in each such craft or trade, employ the number of apprentices or the ratio of apprentices to journeyworkers fixed in the certificate issued by the joint apprenticeship committee or present an exemption certificate issued by the Division of Apprenticeship Standards.

**11.4.4** "Apprenticeship craft or trade", as used in this Paragraph, shall mean a craft or trade determined as an apprenticeship occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

**11.4.5** If Design Professional or subcontractors or consultants employ journeyworkers or apprentices in any apprenticeship craft or trade in the area of the Project site, and there exists a fund for assisting to allay the cost of the apprenticeship program in the trade or craft, to which fund or funds other contractors in the area of the Project site are contributing, Design Professional and subcontractors or consultants shall contribute to the fund or funds in each craft or trade in which they employ journeyworkers or apprentices on the Covered Services hereunder in the same amount or upon the same

basis and in the same manner done by the other contractors. Design Professional may include the amount of such contributions in computing its compensation under the Agreement; but if Design Professional fails to do so, it shall not be entitled to any additional compensation therefore from University.

**11.4.6** In the event Design Professional willfully fails to comply with this Paragraph 11.4, it will be considered in violation of the requirements of the Agreement.

**11.4.7** Nothing contained herein shall be considered or interpreted as prohibiting or preventing the hiring by Design Professional or subcontractors or consultants of journeyworker trainees who may receive on-the-job training to enable them to achieve journeyworker status in any craft or trade under standards other than those set forth for apprentices.

## **11.5 WORK DAY**

**11.5.1** Design Professional shall not permit any worker providing Covered Services to labor more than 8 hours during any 1 day or more than 40 hours during any 1 calendar week, except as permitted by law and in such cases only upon such conditions as are provided by law. Design Professional shall forfeit to University, as a penalty, \$25 for each worker employed in the execution of the Agreement by Design Professional, or any subcontractors or consultant, for each day during which such worker is required or permitted to work providing Covered Services more than 8 hours in day 1 day and 40 hours in any 1 calendar week in violation of the terms of this Paragraph or in violation of the provisions of any law of the State of California. Such forfeiture amounts may be deducted from the compensation otherwise due under this Agreement. Design Professional and each subcontractor or consultant shall keep, or cause to be kept, an accurate record showing the actual hours worked each day and each calendar week by each worker employed under this Agreement, which record shall be kept open at all reasonable hours to the inspection of University, its officers and agents, and to the inspection of the appropriate enforcement agency of the State of California.

## **11.6 PATIENT HEALTH INFORMATION**

**11.6.1** Design Professional acknowledges that its employees, agents, subcontractors, consultants and others acting on its behalf may come into contact with Patient Health Information ("PHI") while performing work at the Project Site. This contact is most likely rare and brief (e.g. walking through a clinic where patient files may be visible, overhearing conversations between physicians while working or touring a hospital, noticing a relative or acquaintance receiving treatment in a University facility, etc.). Design Professional shall immediately notify University Representative of any such contact. Any and all forms of PHI should not be examined closer, copied, photographed, recorded in any manner, distributed or shared. Design Professional will adopt procedures to ensure that its employees, agents and subcontractors refrain from such activity. If Design Professional, its employees, agents or subcontractors do further examine, copy, photograph, record in any manner, distribute or share this information, Design Professional will report such actions immediately to the University Representative. Design Professional will immediately take all steps necessary to stop any such actions and will ensure that no further violations of this contractual

responsibility will occur. Design Professional will report to University Representative within five (5) days after Design Professional gives University Representative notice of the event/action of the steps taken to prevent future occurrences.

## **ARTICLE 12 - EXTENT OF AGREEMENT**

### **12.1 AUTHORITY OF AGREEMENT**

**12.1.1** This Agreement represents the entire and integrated agreement between University and Design Professional and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both University and Design Professional.

### **12.2 EXHIBITS**

**12.2.1** This Agreement includes the following exhibits attached hereto:

Exhibit A: General Conditions of University's Bidding Documents; Specifications, Division 1, General Requirements  
Exhibit B: Design Professional Rate Schedule  
Exhibit C: Supplemental Requirements  
Exhibit D: Regulatory Agencies & Approvals Requirements  
Exhibit E: Format for Listing Rooms and Spaces  
Exhibit F: Value Engineering  
Exhibit G: Transportation, Per Diem, and Mileage Reimbursement Schedule  
Exhibit H: Project Program (dated [REDACTED]) includes  
Exhibit I: University of California Certificate of Insurance  
Exhibit J: Constructability Analysis  
Exhibit L: Project Schedule

### **12.3 THIRD-PARTY BENEFICIARIES**

**12.3.1** Nothing contained in this Agreement is intended to make the CM/Contractor or any construction Subcontractor (regardless of tier), any employee or agent of the construction Contractor or any Subcontractor or any person, including any consultant of Design Professional (regardless of tier), a third-party beneficiary of any obligations between University and Design Professional.

## **ARTICLE 13 - FEDERAL AND STATE GRANTS**

In the event that a federal or state grant or other federal or state financing is used in the funding of this Project, Design Professional shall permit the funding agency or its designee access to, and grant the funding agency the right to examine, documents covering the services performed under this Agreement. Design Professional shall comply with applicable federal or state agency requirements including, but not limited to, the requirements regarding hours, overtime compensation, nondiscrimination, and contingent fees.

## **ARTICLE 14 - NOTICES**

### **14.1 UNIVERSITY**

Any notice may be served upon University by delivering it, in writing, to University at the address set forth on the last page of this Agreement, or by depositing it in a United States Postal Service deposit box with the postage fully prepaid and with the notice addressed to University at the aforementioned or by

sending a facsimile of the notice to University's facsimile number set forth on the last page of this Agreement. Notice is effective only if and when it is actually received.

## **14.2 DESIGN PROFESSIONAL**

Any notice may be served upon Design Professional by delivering it, in writing, to Design Professional at the address set forth on the last page of this Agreement, by depositing it in a United States Postal Service deposit box with the postage fully prepaid and with the notice addressed to Design Professional at the aforementioned address, or by sending a facsimile of the notice to Design Professional's facsimile number set forth on the last page of this Agreement. Notice is effective only if and when it is actually received.

## **ARTICLE 15 - SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon University and Design Professional and their respective successors and assigns. Neither the performance of this Agreement, nor any part thereof, nor any monies due or to become due hereunder, may be assigned by Design Professional without the prior written consent and approval of University.

### **15.1 DESIGN PROFESSIONAL'S DEATH OR INCAPACITATION**

**15.1.1** If Design Professional transacts business as an individual, upon Design Professional's death or incapacitation, University may, at its option, terminate this Agreement as of the date of such event. If so terminated, neither Design Professional, nor Design Professional's estate shall have any further right to perform hereunder, and University shall pay Design Professional or the estate the compensation payable under Article 5 for any services rendered prior to this termination not theretofore paid. This compensation shall be reduced by the amount of additional costs that will be incurred by University by reason of this termination.

**15.1.2** If there is more than one Design Professional, and any one of them dies or becomes incapacitated, and the others continue to render the services covered herein, University will make payments to those continuing as though there had been no such death or incapacitation; University will not be obliged to take any account of the person who died or became incapacitated, or to make any payment to this person or this person's estate. These provisions shall apply in the event of progressive or simultaneous occasions of death or incapacitation among any group of persons named as Design Professional herein if death or incapacitation befalls the last member of this group before the services under this Agreement are fully performed, then the rights set forth under subparagraph 15.1.1 shall apply.

## **ARTICLE 16 - TERMINATION OF AGREEMENT**

### **16.1 UNIVERSITY - INITIATED TERMINATION**

**16.1.1** If University determines that Design Professional has failed to perform in accordance with the terms and conditions of this Agreement, University may terminate all or part of the Agreement for cause. This termination shall be effective if Design Professional does not cure its failure to perform within 10 days (or more, if authorized in writing by University) after receipt of a notice of intention to terminate from University

specifying the failure in performance. If a termination for cause does occur, University will have the right to withhold monies otherwise payable to Design Professional until the Project is completed. If University incurs additional costs, expenses, or other damages due to the failure of Design Professional to properly perform pursuant to the Agreement, these costs, expenses, or other damages shall be deducted from the amounts withheld. Should the amounts withheld exceed the amounts deducted, the balance will be paid to Design Professional upon completion of the Project. If the costs, expenses, or other damages incurred by University exceed the amounts withheld, Design Professional shall be liable to University for the difference.

**16.1.2** University may terminate this Agreement for convenience at any time upon written notice to Design Professional, in which case University will pay Design Professional in full for all services performed and all expenses incurred under this Agreement up to and including the effective date of termination. In ascertaining the services actually rendered to the date of termination, consideration will be given to both completed Work and Work in progress, whether delivered to University or in the possession of Design Professional, and to authorized Reimbursable Expenses. No other compensation will be payable for anticipated profit on unperformed services.

### **16.2 DESIGN PROFESSIONAL - INITIATED TERMINATION**

**16.2.1** Design Professional may terminate this Agreement for cause if University fails to cure a material default in performance within a period of 30 days, or such longer period as Design Professional may allow, after receipt from Design Professional of a written termination notice specifying the default in performance. In the event of termination for cause by Design Professional, University will pay Design Professional in accordance with subparagraph 16.1.2.

### **16.3 DOCUMENTS AND MATERIALS**

**16.3.1** In the event of Agreement termination by either party for any reason, University reserves the right to receive, and Design Professional shall promptly provide to University, all Drawings, Specifications, models, and other documents and materials prepared by Design Professional for the Project. In the event of termination, any dispute regarding the amount to be paid under Article 16 shall not derogate from the right of University to receive and use any such documents or materials.

IN WITNESS WHEREOF, UNIVERSITY and DESIGN PROFESSIONAL have executed this Agreement as of the date first written above (see Cover Page).

DESIGN PROFESSIONAL FIRM NAME:

By: {NAME}

{TITLE}

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

DESIGN PROFESSIONAL FIRM ADDRESS: { }

DESIGN PROFESSIONAL FACSIMILE NUMBER: { }

EMPLOYER IDENTIFICATION NUMBER: { }

UNIVERSITY: THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By: {NAME}

{TITLE}

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

UNIVERSITY ADDRESS: University of California, {FACILITY NAME}, {MAILING ADDRESS}

UNIVERSITY FACSIMILE NUMBER: { }