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EXECUTIVE DESIGN PROFESSIONAL AGREEMENT
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".

{CONTINUE THE PARAGRAPH AFTER CHOOSING THE APPROPRIATE OPTION:

1. IF THE FIRM IS A CORPORATION, USE THE CORPORATE TITLE.
2. IF THE FIRM IS A PARTNERSHIP, LIST THE NAMES OF ALL OF THE PARTNERS. IF THE PARTNERSHIP IS OPERATING AS A "DOING BUSINESS AS (DBA)" FIRM, INCLUDE THE DBA NAME. FOR A GENERAL PARTNERSHIP, STIPULATE AFTER ALL LISTED NAMES THE TERM "Co-partners."
3. IF THE FIRM IS A SOLE PROPRIETORSHIP, LIST THE NAME OF THE INDIVIDUAL, FOLLOWED BY THE WORDS "An Individual." IF THE SOLE PROPRIETORSHIP IS OPERATING AS A DBA FIRM, INCLUDE THE DBA NAME.}

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 Architecture or Engineering in performing the services set forth in this Agreement for the following project:

{NOTE:THE FACILITY NAME, PROJECT NUMBER, AND PROJECT NAME MUST BE THE SAME AS THOSE RECORDED FOR FUNDING PURPOSES.}

UNIVERSITY OF CALIFORNIA, {FACILITY NAME}

{PROJECT NUMBER}

{PROJECT NAME}

{PROJECT DESCRIPTION, include approximate square footage}

CONSTRUCTION BUDGET: {DOLLAR AMOUNT}

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 Time is of the essence for this Agreement.

1.1.5 Design Professional shall cooperate with University, its designees, and Contractor in furthering the interests of University.

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

1.1.7 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 a Project.

1.1.8 Design Professional shall perform all services in compliance with applicable laws, codes, rules, regulations, ordinances, University policies, and Facility standards. University policies include without limitation those related to Seismic Safety and Sustainable Practices.

1.1.9 Services required by this Agreement include, at no additional cost to University, all services necessitated, in whole or in part, by errors and omissions of, or breach of this Agreement by, Design Professional, its subconsultants, or any person or entity working under Design Professional.

{FACILITY HAS THE OPTION TO USE 1.1.10 OR TO DELETE IT}

1.1.10 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement may be executed via a University approved digital signature process and shall have the same force and effect as the use of a manual signature. The University reserves the right to reject any digital signature that cannot be positively verified by the University system as an authentic digital signature.

1.2 DESIGN PROFESSIONAL STANDARD OF CARE

1.2.1 Design Professional, its officers, agents, employees, subcontractors, subconsultants 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 (including its contracting mode).

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 in the Exhibits.

NOTE: EXHIBITS MUST ALSO INCLUDE THE FACILITY'S STANDARD SPECIFICATIONS, DIVISION 1, GENERAL REQUIREMENTS.

1.3.1 Agreement. The term "Agreement" means this Agreement, Supplemental Requirements, Exhibits, Amendments, and all other documents identified in this Agreement which together form the agreement between University and the Design Professional for the Work the Agreement constitutes the complete agreement between University and the Design Professional and supersedes any previous agreements or understandings.

1.3.2 Architect (or Engineer) of Record. The term "Architect of Record" or "Engineer of Record" 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.

1.3.3 As-builts (As-built Drawings and Specifications). The term "As-builts" shall mean the marked-up version of the Contract Documents prepared by the construction Contractor to record as-built conditions, current changes, and selections made during construction.

1.3.4 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 in the Exhibits.

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

1.3.6 Construction Documents. The term "Construction Documents" shall mean the documents prepared and furnished by the Design Professional to be used for bidding the construction work for the Project.

1.3.7 Contract Documents. The term "Contract Documents" shall mean the Advertisement for Bids, Instructions 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.

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

1.3.9 Estimated Project Construction Cost. The term "Estimated Project Construction Cost" shall mean Design Professional's written estimate in the form specified by University in the Exhibits, of the total Construction Cost of the Project at the various stages of the design process.

1.3.10 Facility. The term "Facility" means the University of California, {FACILITY NAME} .

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

1.3.12 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 architect (or engineer) who is the first point of contact in providing all services required by this Agreement.

1.3.13 Project Program. The term "Project Program" shall mean a written statement in the Exhibits of University's design objectives, constraints, and criteria, including space requirements and relationships, flexibility and expendability, special equipment and systems, and Project site requirements.

1.3.14 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.

1.3.15 Record Documents. The term "Record Documents" shall mean those documents (including without limitation the updated version of the Construction Documents) prepared by the Design Professional incorporating Addenda, Change Orders and information from the As-Builts and other data furnished by Contractor to Design Professional.

1.3.16 University. The term "University" shall mean the Regents of the University of California.

1.3.17 University's Representative. The term "University's Representative" shall mean the person or entity providing University's Representative services as indicated in the Contract Documents including, but not limited to, issuance of written communications with the Contractor.

1.3.18 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 - BASIC SERVICES

Basic Services to be provided by Design Professional include the services described in this Article 2 and as further described in the Supplemental Requirements in the Exhibits.

2.1 GENERAL

2.1.1 The services of Design Professional shall be performed in accordance with this Agreement and the Supplemental Requirements in the Exhibits.

2.1.2 To the extent deemed necessary by Design Professional, 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:

Consultant Name

{LIST THE NAMES OF UNIVERSITY-APPROVED CONSULTANTS}

Discipline

{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 Project Engineer. So long as the Project Architect or Project Engineer performs in a manner acceptable to University, and remains in Design Professional's employ, the Project Architect or Project Engineer shall remain the first point of contact for 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 Project Engineer shall be the person named below:

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

Additionally, the University may require other individuals working for the Design Professional or its subconsultants to attend design-related meetings as requested by University.

2.1.4 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.

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

2.1.6 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 shall be consistent with Design Professional's obligations under this Agreement.

2.1.7 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.

2.1.8 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.

2.2 SCHEMATIC DESIGN PHASE

2.2.1 Upon University's written direction to proceed, Design Professional shall provide Schematic Design Phase services described herein and in the Supplemental Requirements in the Exhibits including, without limitation, Schematic Design Documents for approval by University.

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 Upon University's written direction to proceed, Design Professional shall provide Design Development Phase services as described herein and in the Supplemental Requirements in the Exhibits 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 including, without limitation, Design Development Documents for approval by University.

2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 Upon University's written direction to proceed, Design Professional shall provide Construction Documents Phase services as described herein and in the Supplemental Requirements in the Exhibits and based on Design Development documents approved in writing by University and any written adjustments in the scope or quality of the Project or in the Construction Budget including, without limitation, Construction Documents for approval by University.

2.4.2 The Drawings and Specifications shall be consistent with the University's General Conditions in the Exhibits and the Division 1 tailored for the Project including but not limited to any Facility requirements.

2.5 BIDDING PHASE

2.5.1 Upon University's written direction to proceed, Design Professional shall provide Bidding Phase services as described herein and in the Supplemental Requirements in the Exhibits.

2.5.2 If the lowest responsive total bid price received exceeds the Construction Budget {PERCENTAGE, e.g. 10}, University may, at its discretion, (1) authorize rebidding of the Project within a reasonable period of time; or (2) require Design Professional, at Design Professional's expense, to modify the Project design and the Construction Documents in order to reduce the Estimated Project Construction Cost to a level that falls within the 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 Upon University's written direction to proceed, Design Professional shall provide Construction Phase

services as described herein and in the Supplemental Requirements in the Exhibits.

2.6.2 The Construction Phase will commence on the date the Agreement between University and Contractor is signed by University and will terminate one year after Notice of Completion or Notice of Cessation, or in the absence of either a Notice of Completion or Notice of Cessation, one year after Final Completion.

2.6.3 Except as otherwise provided in the Contract Documents or as directed by University, all written communications with Contractor shall be sent and received by University's Representative.

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

2.6.5 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.

2.6.6 Design Professional shall prepare drawings and specifications needed to issue Field Orders and Change Orders as required by the Supplemental Requirements in the Exhibits.

{FACILITY HAS THE OPTION TO USE 2.6.7 OR TO LEAVE PREPARATION OF CHANGE ORDERS AS ADDITIONAL SERVICES.

2.6.7 No additional compensation shall be paid to Design Professional for the preparation of Change Orders, including the preparation of Drawings, Specifications, and supporting data and other services required in connection with the preparation of Change Orders until the total cumulative value (calculated by adding the absolute values of both additive and deductive changes not caused, in whole or in part, by Design Professional errors or omissions) exceeds { } percent of the Contract Sum.

2.6.8 Design Professional shall provide Record Documents as described herein and in the Supplemental Requirements in the Exhibits.

2.6.9 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 as required by the Supplemental Requirements in the Exhibits. 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.

2.7 INDEPENDENT SEISMIC/STRUCTURAL REVIEW

2.7.1 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.

2.8 SCHEDULE

2.8.1 Design Professional acknowledges that all time limits stated in this Agreement are of the utmost importance to University. Design Professional shall meet the Project Schedule, which may be revised from time to time by mutual agreement, for completion of Design Professional's services.

2.8.2 Design Professional shall submit its proposed work plan for the performance of Design Professional's services within 5 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 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. Design Professional's work plan, when approved by University, shall not be exceeded by Design Professional except when University and Design Professional mutually agree, in writing, to a revised Project Schedule.

2.8.3 The total time scheduled for full completion of Design Professional's services for each phase of the Project shall not exceed the durations listed below, unless mutually agreed upon in writing by Design Professional and University. The durations for University review period listed in the Project Schedule shall be computed from the date on which a clear, complete submittal is received by University. University's failure to meet its commitment to provide written requested information or to review within the stipulated time frames shall be cause for an adjustment in the Project Schedule. However, submittals received for review which are rejected, in writing, as not meeting the deliverables required by submittal requirements of this Agreement and the attachments thereto, shall not be cause for adjustment of the Project Schedule, and any such delay caused by such rejected submittals shall be at the sole responsibility of Design Professional.

- .1** Schematic Design Phase: Complete within { } weeks plus { } weeks approval time.
- .2** Design Development Phase: Complete within { } weeks, plus { } weeks for approval time.
- .3** Construction Documents Phase: Complete within { } weeks, plus { } weeks for approval time.

ARTICLE 3 - ADDITIONAL SERVICES

Unless required in Article 2 of this Agreement or in the Supplemental Requirements to be performed as part of Basic Services, the services described in this Agreement and the Supplemental Requirements 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 instrument signed by University. No Additional Services shall be compensable unless so authorized.

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's Representative.

4.2 PROVISION OF INFORMATION, SURVEYS, REPORTS, AND DATA

4.2.1 University shall have the right to make changes to the Project Program. 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.

4.2.2 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.

4.2.3 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 Contractor under the Contract Documents.

4.2.4 University shall 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.

4.2.5 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.

4.2.6 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.

4.2.7 The University shall have the right to require Design Professional and its subconsultants to participate in meetings and provide documents and data (in addition to those required by Basic Services) and to perform Additional Services, pursuant to this Agreement, whether or not such Additional Services are described in the Agreement or the Supplemental Requirements.

4.2.8 The services, information, surveys, reports, and Additional Services 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 schedule:

NOTE: AS AN ALTERNATIVE TO PAYMENT AT THE COMPLETION OF EACH PHASE, MONTHLY PAYMENTS BASED ON THE PERCENTAGE OF COMPLETION MAY BE MADE, NOT TO EXCEED THE TOTAL FEE DUE FOR EACH PHASE.

<u>Phase or Stage Completed</u>	<u>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 Construction Contract)	Increase to { %} (or a proportional percentage when a portion of the Project is awarded)
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 OR FOR EXTENSION OF CONTRACT TIME

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 Design Professional Rate Schedule in the Exhibits.

5.2.2 If the Contract Time initially established in the Contract Documents at the time of award is exceeded or extended by a number of days in excess of { 60 } calendar days through the fault of University or Contractor and through no fault of Design Professional, compensation for any Basic Services provided during this extended period of the construction phase 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.

5.2.3 If the Work of the Project is suspended or abandoned for more than { 3 } consecutive months, and such suspension was not scheduled at the beginning of the Project, as provided under subparagraph 4.2.4, 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 { 3 } 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.

5.3 REIMBURSABLE EXPENSES

5.3.1 For Reimbursable Expenses, as described in this paragraph 5.3, only actual costs will be reimbursed in accordance with the Reimbursement Schedule in the Exhibits. 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.

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.

ARTICLE 7 - DESIGN PROFESSIONAL'S RECORDS AND FILES

7.1.1 Books and records relating to this Agreement shall be maintained in accordance with Generally Accepted Accounting Principles (GAAP) or International Financial Reporting Standards (IFRS). University or University's authorized representative shall have access to, the right to audit and the right to copy pertinent parts of Design Professional and Design Professional's consultants' books and records. Such 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.

7.1.2 Design Professional and Design Professional's consultants shall make their files available for inspection and copying by University upon reasonable notice.

7.1.3 Design Professional shall include appropriate language in consultant's agreements to enforce the provision of paragraph 7.1.2.

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.

8.1.3 University may purchase the design of the Project from Design Professional for its then fair market value. If University purchases the design of the Project, then University may use the Drawings and Specifications as a whole or in substantial part on other projects, and Design Professional may not use the Drawings and Specifications in whole, in part, or details thereof for other projects.

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, in connection with the Project, including without limitation, future additions, expansions, renovations, 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 unless University has purchased the design from Design Professional in accordance with subparagraph 8.1.3.

8.3 INDEMNIFICATION

8.3.1 University will defend, indemnify and save harmless Design Professional, its officers, agents and employees from any costs or claims for damages arising from University's use, on other projects, of the Construction Documents, the Drawings and Specifications, or the designs depicted in them. As used in this Article 8, the use "on other projects" does not include any of the uses specified in subparagraph 8.2.2.

8.3.2 Notwithstanding paragraph 8.3.1, University will not defend, indemnify or save harmless Design Professional, its officers, agents, or employees from any costs or claims asserted or imposed by any person or entity claiming that University's use of the Construction Documents, the Drawings and Specifications, or the designs depicted in them is contrary to or in violation of any copyright, patent, trade secret, trade name, trademark, or any proprietary, contractual or legal right pertaining to their use.

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 Contractor.* If any claim arises under the Construction Contract Documents for the Project and is submitted to arbitration, and either 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 Contractor.* If any claim arises under the Construction Contract Documents for the Project and is submitted to litigation, and either 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 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 Contractor conducted in accordance with the Construction Industry Arbitration Rules of the AAA then in effect. 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 which 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, verification 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 15 days and not more than 45 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 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 auto-mobiles, 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. At the option of the University and in its sole discretion, the University may require Design Professional to purchase project specific professional liability insurance for the Project as a reimbursable cost with the minimum limits.

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 by law in the state in which work is performed and Employer's Liability insurance with coverage and minimum limits as follows:

Each Employee	\$1,000,000
Each Accident	\$1,000,000
Policy Limit	\$1,000,000

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 in the Exhibits. If Design Professional's insurance company refuses to use the University's Certificate of

Insurance form, it must provide a Certificate of Insurance (and endorsements, if needed) evidencing compliance with Paragraph 10.2 and Special Provisions 1 through 3 on the Certificate of Insurance Exhibit. It alone constitutes evidence of insurance.

- .2 Provide that coverage cannot be canceled without advance written notice to University, in accordance with policy provisions.
- .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 University, University's officers, agents, employees, consultants, University's Representative, and University's Representative's consultants, regardless of whether or not identified in the Contract Documents or to Design Professional in writing, will be included as additional insureds on Design Professional's general liability policy for and relating to the Work to be performed by Design Professional and its consultants. Design Professional's general liability insurance policy shall name University as an additional insured pursuant to additional insured endorsement CG2010 (11/85) or a combination of both CG 2010 (10/01 or 07/04) and CG 2037 (10/01 or 07/04). The General Liability coverage shall contain a Severability of Interest provision and shall be primary insurance as respects The Regents of the University of California, its officers, agents and employees. Any insurance or self-insurance maintained by The Regents of the University of California shall be excess of and non-contributory with this insurance. This requirement shall not apply to Worker's Compensation and Employer's Liability Insurance. The Professional Liability insurance policy shall include Contractual Liability Coverage or endorsements to the insurance policies for Contractual Liability Coverage for liability that would exist in the absence of the contract.
- .5 The General Liability and the Professional Liability 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 AND OTHER REQUIREMENTS

11.1 NONDISCRIMINATION

11.1.1 In connection with the performance of the Design Professional pursuant to this Agreement, Design Professional shall provide equal treatment to, and shall not willfully discriminate against or allow harassment of any employee or applicant for employment on the basis of: race; color; religion; sex; age; ancestry; national origin; sexual orientation; physical or mental disability; veteran's status; medical condition (as defined in Section 12926 of the State of California Government Code and including cancer-related

medical conditions and or genetic characteristics); genetic information (as defined in the Genetic Information Nondiscrimination Act of 2008 and including family medical history); marital status; gender identity, pregnancy, or citizenship (within the limits imposed by law or University's policy) or service in the uniformed services (as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994). Design Professional will also take affirmative action to ensure that any such employee or applicant for employment is not discriminated against on any of the bases identified above. Such equal treatment shall apply, but not be limited to the following: employment; upgrade; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Design Professional also agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Design Professional will, in all solicitations or advertisements for employees placed by or on behalf of the Design Professional, state that qualified applicants will receive consideration for employment without regard to: race; color; religion; sex; age; ancestry; national origin; sexual orientation; physical or mental disability; veteran's status; medical condition (as defined in Section 12926 of the State of California Government Code and including cancer-related medical conditions and or genetic characteristics); genetic information (as defined in the Genetic Information Nondiscrimination Act of 2008 and including family medical history); marital status; gender identity, pregnancy, or citizenship (within the limits imposed by law or University's policy) or service in the uniformed services (as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994). For purposes of this provision: (1) "Pregnancy" includes pregnancy, childbirth, and medical conditions related to pregnancy and childbirth; and (2) "Service in the uniformed services" includes membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

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 Subconsultants comply with prevailing wage law pursuant to the State of California Labor Code, including but not limited to Sections 1770, 1771, 1771.1, 1772, 1773, 1773.1, 1774, and 1775, 1776, 1777.5, and 1777.6 of the State of California Labor Code. Compliance with these sections is required by this Contract. The Work under this Contract is subject to compliance monitoring and enforcement by the State of California Department of Industrial Relations. 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 \$200 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, \$100 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 and in accordance with prevailing wage law pursuant to the Labor Code, including but not limited to Section 1777.5. The Design Professional bears responsibility for compliance with this section for all apprenticeable occupations.

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 hour of apprentice work for each 5 hours of journeyperson work, 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 any 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 in the form of the Amendment in the Exhibits signed by both University and Design Professional.

12.2 EXHIBITS

12.2.1 The following exhibits are incorporated and made part of this Agreement:

- Exhibit { }: General Conditions of University's Bidding Documents; Specifications, Division 1, General Requirements
- Exhibit { }: Design Professional Rate Schedule for Additional Services
- Exhibit { }: Supplemental Requirements
- Exhibit { }: Format for Listing Rooms and Spaces

- Exhibit { } : Reimbursement Schedule
- Exhibit { } : Cost Estimate Format
- Exhibit { } : Project Program
- Exhibit { } : University of California Certificate of Insurance
- Exhibit { } : Amendment
- Exhibit { } : Quality Assurance
- Exhibit { } : Green Building Baseline (New Construction and Major Renovation)**
- Exhibit { } : Green Building Baseline (Renovations)**
- Exhibit { } : Self-Certification
- Exhibit { } : Final Distribution of Contract Dollars

12.3 THIRD-PARTY BENEFICIARIES

Nothing contained in this Agreement is intended to make the construction 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.

12.4 SURVIVAL

The provisions of this Agreement which by their nature survive expiration or termination of the Agreement or Final Completion of the Project or the performance of services under this Agreement, including any and all warranties, indemnities, payment obligations, and University's right to audit Design Professional's and Design Professional's consultants' books and records, shall remain in full force and effect after any expiration or termination of the Agreement or Final Completion of the Project or the performance of services under this Agreement.

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

14.1.1 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 address set forth on the last page of this Agreement, 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

14.2.1 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 address set forth on the last page of this Agreement, 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, data, and materials prepared or generated by Design Professional and its subconsultants 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.

ARTICLE 17 - STATISTICAL REPORTING

At the commencement of performance, Design Professional shall complete and submit, and require each subconsultant who performs services under this Agreement to complete and submit, a certification in the form of the Self-Certification. At the completion of work, Design Professional shall complete and submit a report of the distribution of compensation received under this Agreement in the form of the Final Distribution of Contract Dollars.

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

DESIGN PROFESSIONAL

{ }

By:

{NAME}

(Signature)

{TITLE}

(Date)

DESIGN PROFESSIONAL ADDRESS

{ }

DESIGN PROFESSIONAL TELEPHONE NUMBER

{ }

DESIGN PROFESSIONAL FACSIMILE NUMBER

{ }

EMPLOYER IDENTIFICATION NUMBER

{ }

**THE UNIVERSITY SIGNATURE IS NOT TO BE AFFIXED TO THIS DOCUMENT
UNTIL IT HAS BEEN SIGNED BY THE DESIGN PROFESSIONAL.**

**THE PERSON SIGNING FOR THE UNIVERSITY MUST HAVE DELEGATED AUTHORITY TO DO SO.
THIS DELEGATION MUST BE MADE IN WRITING BY THE FACILITY CHANCELLOR OR BY THE LABORATORY
DIRECTOR, AND IT MUST BE MADE IN ACCORDANCE WITH THE REGENTS' STANDING ORDER 100.4**

UNIVERSITY

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By:

{ }

(Signature)

(Date)

UNIVERSITY ADDRESS

{FACILITY NAME}, {MAILING ADDRESS}

UNIVERSITY TELEPHONE NUMBER

{ }

UNIVERSITY FACSIMILE NUMBER

{ }