

AGREEMENT BETWEEN OWNER AND DESIGN PROFESSIONAL

Board of Regents, State of Iowa
May 2014 Edition

TABLE OF ARTICLES

1. AGREEMENT
2. GENERAL PROVISIONS
3. DESIGN PROFESSIONAL'S RESPONSIBILITIES
4. OWNER'S RESPONSIBILITIES
5. TIME
6. COMPENSATION AND PAYMENTS
7. INDEMNITY AND INSURANCE
8. TERMINATION
9. DISPUTE MITIGATION AND RESOLUTION
10. MISCELLANEOUS
11. MODIFICATIONS TO THE AGREEMENT

ARTICLE 1 AGREEMENT

This Agreement is made by and between the Owner, Board of Regents, State of Iowa, acting for Iowa State **University** and the Design Professional **[Enter Firm's Name and Address]**, for services in connection with the following Project entitled and briefly described as follows:

Project Title: **[Enter Project Title Here]**

This Project includes **[Enter Description Here]**.

The budgeted cost of construction for the Project included in this Agreement is **[\$Amount in numbers]**.

A strikethrough of paragraph(s) represents deleted or modified language – See Article 11 for deletions, modifications and additions to the Agreement.

ARTICLE 2 GENERAL PROVISIONS

The Owner and the Design Professional agree as set forth below:

- 2.1 **STANDARD OF CARE** The Design Professional shall furnish or provide the architectural and engineering services necessary to design the Project in accordance with the Owner's program requirements, **as outlined in the Owner's program and other relevant data defining the Project, which is attached as Exhibit A.** The architectural and engineering services shall include Basic Services plus Additional Services as may be authorized by the Owner. Services shall be performed in accordance with the standard of professional skill and care required for a Project of similar size, scope, and complexity.
- 2.2 **RELATIONSHIP OF THE PARTIES** The Design Professional accepts a relationship of trust and confidence with the Owner for this Agreement and will cooperate and exercise the skill and judgment required above in furthering the interests of the Owner. The Design

Professional represents that it possesses the skill, expertise, and licensing to perform the Services. The Owner and Design Professional agree to work together on the basis of mutual trust, good faith, and fair dealing, and shall take actions reasonably necessary to enable each other to perform this Agreement in a timely, efficient, and economical manner. The Owner and Design Professional shall endeavor to promote harmony and cooperation among all Project participants. Section 2.2 is not intended to create a fiduciary relationship between the Owner and the Design Professional.

2.3 Neither the Design Professional nor any of its agents or employees shall act on behalf of or in the name of the Owner except as provided in this Agreement or unless authorized in writing by the Owner.

2.4 The Owner and the Design Professional shall perform their obligations with integrity, ensuring at a minimum to: (a) each avoid conflicts of interest and disclose any promptly to the other Party; and (b) each warrant that it has not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including its agents, officers, and employees, subconsultants, or others for whom they may be liable, to secure preferential treatment.

2.5 DEFINITIONS

2.5.1 "Addendum" is a written or graphic instrument issued by the Design Professional before execution of the construction contract(s) that modifies or interprets the Construction Documents by additions, deletions, clarifications, or corrections.

2.5.2 "Agreement" means the Agreement Between Owner and Design Professional as modified, and exhibits and attachments made part of this Agreement upon its execution.

2.5.2.1 The following exhibits are part of this Agreement:
EXHIBIT A: Design Professional's Proposal Letter
EXHIBIT B: Reimbursable Expenses
EXHIBIT C: Schedule of Hourly Fees

2.5.3 "Business Day" are all Days, except weekends and official federal or state holidays where the Project is located.

2.5.4 "Construction Documents" are written and graphic documents prepared or assembled by the Design Professional for communicating the design of the Project and administering the contract for its construction.

2.5.5 "Constructor" means the person or entity retained by the Owner to perform Work for the Project and includes the Constructor's Representative.

2.5.6 "Cost of Construction" means the total cost to Owner of those portions of the entire Project designed or specified by the Design Professional. Cost of Construction does not include the Design Professional's compensation and expenses and Owner's expenses associated with the Project or the cost of other services to be provided by others to the Owner.

2.5.7 "Day" means a calendar day.

- 2.5.8 “Design Professional” is the person or entity identified in Article 1 and includes the Design Professional's representative.
- 2.5.9 The “Drawings” are the graphic and pictorial portions of the Construction Documents, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams. Drawings are intended to show general arrangements, design, and dimensions of Work and are partly diagrammatic.
- 2.5.10 “Laws” mean federal, state, and local laws, ordinances, codes, rules, and regulations applicable to the Services and to which the Design Professional must comply that are enacted as of the Agreement date.
- 2.5.11 “Others” mean other contractors, material suppliers, and persons at the Worksite who are not employed by the Constructor or Subcontractors.
- 2.5.12 “Owner” is the person or entity identified in the Agreement and includes the Owner's Representative.
- 2.5.13 “Parties” mean the Owner and Design Professional collectively.
- 2.5.14 The “Project,” as identified in the Agreement, is the building, facility, or other improvements to be designed by the Design Professional for which the Constructor is to perform Work under the Agreement Between the Owner and Constructor. It may also include construction by the Owner or Others.
- 2.5.15 The “Schedule of the Work” is the document prepared by the Constructor that specifies the dates on which the Constructor plans to begin and complete various parts of the Work, including dates on which information and approvals are required from the Owner.
- 2.5.16 “Services” mean the services provided by the Design Professional or by consultants retained by the Design Professional for the Project.
- 2.5.17 The “Specifications” are that portion of the Construction Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.
- 2.5.18 A “Subcontractor” is a person or entity retained by the Constructor as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include the Design Professional or Others.
- 2.5.19 A “Subsubcontractor” is a person or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's Work.
- 2.5.20 “Work” means the construction and services necessary or incidental to fulfill the Constructor's obligations for the Project in conformance with the Agreement Between the Owner and Constructor. The Work may refer to the whole Project or only a part of the Project if work is also being performed by the Owner or Others.

2.5.21 "Worksite" means the geographical area of the Project location where the Work is to be performed.

ARTICLE 3 DESIGN PROFESSIONAL'S RESPONSIBILITIES

3.1 GENERAL RESPONSIBILITIES

3.1.1 **PROJECT REQUIREMENTS** The Design Professional, in order to determine the requirements of the Services, shall conduct a preliminary evaluation of the information provided by the Owner. The Design Professional shall confirm its understanding of such requirements with the Owner and shall assist the Owner to refine or make clarifications in writing if applicable to the Owner's program for the Project.

3.1.2 The Design Professional shall not proceed with the development of successive Construction Documents until receiving written approval from the Owner. The Design Professional shall promptly revise without additional compensation:

3.1.2.1 those documents which have not been previously approved by the Owner and to which the Owner has reasonable objections;

3.1.2.2 those documents identified by the Constructor and reasonably accepted by the Owner as presenting constructability problems; and

3.1.2.3 those documents needing revisions to reflect clarifications and assumptions and allowances on which the Cost of Construction is based.

3.1.3 The Design Professional shall have reasonable access to the Worksite at all times.

3.1.4 The Design Professional shall assist the Owner with filing required documents with governmental authorities having jurisdiction over the Project, including filing documents required to obtain permits necessary for construction of the Project.

3.1.5 The Design Professional shall not be responsible for the acts or omissions of the Owner, the Constructor, and Subcontractors, and their respective agents or employees, or any other persons or entities performing work on the Project who are not under the direct control or authority of the Design Professional except as provided in this Agreement.

3.1.6 Services to be provided by the Design Professional shall be rendered in a timely manner.

3.2 **BASIC SERVICES** The Design Professional's Basic Services consist of any Services provided pursuant to Sections 3.1 and 3.2. The Design Professional shall identify in Its Proposal Letter, Exhibit A: (a) other Services included in Basic Services; (b) the specific design disciplines included in Basic Services; and (c) those portions of the Project design to be furnished by the Owner, Constructor, or Others. If professional design services are to be furnished by the Owner, Constructor, or Others, the Design Professional shall indicate all performance and design criteria to be satisfied in accordance with the Owner's program, and the Owner, Constructor or Others shall not be responsible for the adequacy of such performance and design criteria. Design services furnished by a Party other than the Design Professional shall be obtained from licensed design professionals, who shall

affix their signature and seal on all Drawings, Specifications, calculations, and submittals prepared by them, and the Design Professional shall be entitled to rely upon the adequacy, accuracy, and completeness of such design services.

The Design Professional shall make all modifications to the Construction Documents necessitated by errors, omissions or inadequacies identified in reviews by Owner Representatives during any and all phases of Services.

The Design Professional shall utilize the Board of Regents, State of Iowa, documents that comprise Division 00, which contain the Bidding Requirements, Contract Forms and Conditions of the construction contract as furnished by the Owner.

3.2.1 COST ESTIMATES The Design Professional shall prepare for the Owner's review and approval (a) a preliminary estimate of the Cost of Construction utilizing area, volume, or similar conceptual estimating techniques and based upon the Owner's Program and (b) updated estimates of the Cost of Construction at the completion of the Schematic Design Documents, the Design Development Documents, and the Construction Documents.

3.2.1.1 The Design Professional shall make every reasonable effort to design the Project so that actual Cost of Construction does not exceed the budgeted cost for construction contained in this Agreement. The Design Professional shall promptly notify the Owner's Representative in writing when the Design Professional believes that the budgeted Cost of Construction might be exceeded.

3.2.1.2 If the statement of probable Construction Cost required in Section 3.2 exceeds the budgeted Cost of Construction, the Owner may choose to revise the Project scope and/or quality as required to reduce the probable Construction Cost. If the Owner chooses to proceed in this manner, the Design Professional shall be responsible for all costs associated with modifying the design.

3.2.2 PROJECT SCHEDULE The Design Professional shall prepare for the Owner's review and approval a preliminary Project Schedule that shall show the timing and sequencing of the design and construction required to meet the time criteria set forth in the Owner's program. The Project Schedule shall be updated for the Owner's review and approval at the completion of Schematic Design Documents, Design Development Documents, and Construction Documents. If the Constructor has been retained to provide preconstruction services as part of the Work, the Design Professional shall coordinate and update the Project Schedule with the Schedule of the Work prepared by the Constructor. The Design Professional shall make appropriate recommendations if any Project Schedule shows a deviation from previously approved Project Schedules.

3.2.3 SCHEMATIC DESIGN DOCUMENTS Based on the Owner's program, including any approved refinements or clarifications, the Design Professional shall prepare, for the Owner's review and approval, Schematic Design Documents consisting of Drawings, outline Specifications and other documents illustrating the Project's basic elements, scale, and their relationship to the Worksite. Schematic Design Documents shall include, as applicable, conceptual plans of the site and structures; preliminary sections and elevations; tabulation of areas showing the net

assignable and gross square foot areas, volumes, and dimensions; and preliminary selections of materials and systems. The Design Professional shall submit the designated quantity of the Schematic Design Documents as identified in Article 11. When the Design Professional submits the Schematic Design Documents, the Design Professional shall identify in writing for the Owner's approval all material changes and deviations that have taken place from the Design Professional's approved preliminary estimate of the Cost of Construction and Project Schedule.

3.2.4 DESIGN DEVELOPMENT DOCUMENTS Based on the approved Schematic Design Documents and the updated estimate of the Cost of Construction and Project Schedule, the Design Professional shall prepare, for the Owner's review and approval, Design Development Documents. The Design Development Documents shall further define the Project, including Drawings and outline Specifications fixing and describing the Project size, character, and site relationships, and other appropriate elements describing the structural, architectural, mechanical, and electrical systems. Design Development Documents shall include, as applicable, plans, sections, and elevations; revised tabulation of areas; criteria and sizing of major components; equipment sizes and capacities and approximate layouts, including required spaces and clearances; typical details; materials selections and general quality levels. When the Design Professional submits the Design Development Documents, the Design Professional shall identify in writing for the Owner's approval all material changes and deviations that have taken place from the Schematic Design Documents and the previously approved estimate of the Cost of Construction and Project Schedule. The Design Professional shall submit the designated quantity of the Design Development Documents as identified in Article 11.

3.2.5 CONSTRUCTION DOCUMENTS Based on the approved Design Development Documents and updated estimate of the Cost of Construction and Project Schedule, the Design Professional shall prepare, for the Owner's review and approval and the approval of governmental authorities, including any revisions necessary to secure such approvals, Construction Documents setting forth in detail the quality levels of and the requirements for construction of the Project, and consisting of Drawings and Specifications that comply with Laws. When the Design Professional submits the Construction Documents, the Design Professional shall identify in writing for the Owner's approval all material changes and deviations that have taken place from the Design Development Documents and the previously approved estimate of the Cost of Construction and Project Schedule. The Construction Documents shall describe all Work necessary to bid and construct the Project. The Design Professional shall submit the designated quantity of the Construction Documents and copies of the tabulation of areas as identified in Article 11.

3.2.5.1 The Design Professional shall consult with the Owner's Representative to identify bidding strategies including alternates required to protect the integrity of the budgeted Cost of Construction.

3.2.5.2 The Construction Documents shall comply with all applicable Laws and regulations pertinent to the Project. The Design Professional shall obtain and forward to the Owner letters of approval from all applicable agencies prior to receipt of bids.

- 3.2.5.3 The Design Professional of record and appropriate Consultants shall place their individual information blocks with certifications, seals, signatures and dates on the original title page of the Construction Documents. The information block shall include the numbers of the pages or sheets, which are covered by certification. The Design Professional shall deliver one set of Construction Documents (Drawings and Specifications) to the Owner with certifications required prior to the bid date of the Project.
- 3.2.6 **DESIGN COORDINATION** The Design Professional shall coordinate the services of all design consultants for the Project. The Design Professional shall promptly report any known errors or omissions to the Owner. However, the Design Professional does not assume an affirmative responsibility to detect errors, omissions, or inconsistencies in the design consultant's services that are not retained by the Design Professional.
- 3.2.7 **BIDDING OR NEGOTIATION ASSISTANCE** The Design Professional shall assist the Owner in obtaining bids or negotiated proposals from constructors by providing electronic files of Drawings, Specifications, and any Addendum, attending pre-bid or pre-award meetings, clarifying the scope and intent of the Construction Documents, and, if appropriate, evaluating proposed constructor's subcontractors and material suppliers for portions of the Work. The Design Professional shall issue any addenda or clarifications promptly in writing.
- 3.2.7.1 The Design Professional of Record shall affix professional's certification to the Addendum as required in Article 3, Subparagraph 3.2.5.3. The Design Professional shall deliver one copy of all Addenda to the Owner with certifications required prior to the bid date of the Project.
- 3.2.7.2 If the lowest bonafide bid exceeds the budgeted Construction Cost for construction, the Owner may choose to revise the Project scope and/or quality as required to reduce projected construction costs. If the Owner chooses to proceed in this manner, the Design Professional shall be responsible for all costs associated with modifying, printing and issuing the Construction Documents as necessary to obtain new bids.
- 3.2.8 **CONSTRUCTION PHASE SERVICES** The Construction Phase will commence upon the issuance of a written Notice of Award from the Owner to the Constructor with simultaneous notification to the Design Professional. The Design Professional shall (a) review and advise the Owner as to the sufficiency of the schedule of values submitted by the Constructor for the Work, (b) review and advise the Owner as to the sufficiency of the Project Schedule with the Schedule of the Work submitted by the Constructor and approved by the Owner, (c) prepare design documents, including Instructions to Constructors, in connection with change orders, and (d) respond to Constructor requests for information (RFI). The Design Professional shall furnish to the Owner and, if directed, to the Constructor interpretations and clarifications of the Drawings and Specifications, by means of additional Drawings, Addenda, Instruction to Constructor or otherwise, as are necessary for the proper execution and progress of the Work. All such interpretations and clarifications shall be consistent with the intent of the Construction Documents and reasonably inferable from them.

3.2.8.1 The Design Professional shall review the Constructor's submittals, including shop drawings, product data, and samples, and make approvals of or recommendations about such submittals to the Owner within ten (10) Business Days of receiving the submittals from the Constructor, unless mutually agreed otherwise by the Design Professional, Constructor, and Owner. The Design Professional shall check the Constructor's submittals for conformance with the design and the scope of the Project and for compliance with the Construction Documents. The Design Professional's review shall not extend to the Constructor's means, methods, techniques, sequences, or procedures, unless such means, methods, techniques, sequences, or procedures have been specified by the Construction Documents.

3.2.8.2 The Design Professional shall assist the Owner in the evaluation and processing of requests for changes in the Work. Based on its evaluation, the Design Professional shall make appropriate recommendations to the Owner by:

Reviewing Change Order proposals and making a recommendation to the Owner's Representative in writing within five (5) working Days of a receipt of proposal.

3.2.8.3 The Design Professional shall visit the Worksite at appropriate intervals to become generally familiar with the quality of the Work and to determine in general if the Work is proceeding in accordance with the Construction Documents. After each Worksite visit, the Design Professional shall promptly provide the Owner with a written report. If the Design Professional becomes aware of any defects or deficiencies in the Work, the Design Professional shall provide prompt notice, followed by written confirmation, to the Owner. If, in the Design Professional's opinion, special testing or inspection of the Work is needed, the Design Professional shall recommend to the Owner such testing or inspection procedures and appropriate consultants. The Design Professional shall not be responsible for construction means, methods, techniques, sequences, and procedures, unless they are specified by the Design Professional, or for ensuring that the Work is in accordance with the Construction Documents.

3.2.8.4 The Design Professional shall not be responsible for the Constructor's safety precautions and programs. However, if the Design Professional has actual knowledge of safety violations, the Design Professional shall give prompt written notice to the Owner.

3.2.8.5 The Design Professional shall assist the Owner in processing the Constructor's applications for payment. Based on its on-site observations and other relevant information, the Design Professional shall recommend and certify upon request to the Owner the amounts due the Constructor and that the Work has progressed to the point indicated in the payment application based on the schedule of values submitted by the Constructor. The Design Professional will interpret the Construction Documents and judge the performance thereunder by both the Owner and the Constructor as follows:

The Design Professional will render interpretations necessary for the proper execution or progress of the Work with reasonable promptness and in accordance with any time limit agreed upon. Either party to the contract may make a written request to the Design Professional for such interpretations.

3.2.8.6 The Design Professional's certification for payment shall not be a representation that the Design Professional has: (a) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (b) reviewed construction means, methods, techniques, sequences, or procedures for the Constructor's Work; (c) reviewed copies of requisitions received from Subcontractors and Material Suppliers and other data requested by the Owner to substantiate the Constructor's right to payment; or (d) ascertained how or for what purpose the Constructor has used money previously paid. The Design Professional shall be entitled to rely on the Constructor's certification as to the application of moneys previously paid.

3.2.8.7 The Design Professional shall attend meetings with the Owner and the Constructor upon reasonable request of the Owner.

The Design Professional shall keep meeting minutes, prepare a report of each meeting and distribute copies to the Owner's Representative, Design Professional Representative and Constructor for distribution.

3.2.8.8 The Design Professional shall assist the Owner in conducting inspections to determine the date or dates of the Constructor's Substantial Completion of the Work. Such assistance shall include compiling a list of items to be completed or corrected so that the Owner may occupy or utilize the Work or a designated portion for its intended use, without unscheduled disruption.

The Design Professional shall assist the Owner in conducting inspections to determine the Constructor's final completion of the Work.

3.2.8.9 In the course of conducting on-site observations to determine the dates of substantial completion and final completion, the Design Professional, along with appropriate Consultants, shall develop and submit to the Owner, a list of contract items to be completed or corrected (punch list). The Design Professional shall assist the Owner in establishing appropriate warranty and guarantee commencement dates for various items of mechanical, electrical and conveying equipment.

3.2.8.10 COMMISSIONING The Design Professional shall assist with the implementation of formal commissioning including the start-up and/or operation of all building systems that are part of the Work.

3.2.8.11 If requested by the Owner, the Design Professional shall visit the Worksite during the Constructor's one-year correction period to assist the Owner in evaluating the need for any corrective measures.

3.2.8.12 The Design Professional will interpret the Construction Documents and judge the performance thereunder by both the Owner and the Constructor as follows:

3.2.8.12.1 Claims, disputes and other matters in question between the Constructor and the Owner relating to the execution or progress of the Work or the interpretations of the Construction Documents may be referred initially to the Design Professional for recommendation, which the Design Professional will render in writing within a reasonable time.

3.2.8.12.2 All interpretations and recommendations of the Design Professional shall be consistent with the intent of and reasonably inferable from the Construction Documents and will be in writing or in the form of Drawings. In the Design Professional's interpretations and judgments, the Design Professional will endeavor to secure faithful performance by both the Owner and the Constructor, will not show partiality to either, and will not be liable for the result of any interpretation or judgment rendered in good faith.

3.2.8.13 Within thirty (30) Days after the Owner accepts the Constructor's construction contract or the Design Professional receives the Constructor's as-builts whichever is later, the Design Professional shall furnish the Owner with record documents.

3.2.9 HAZARDOUS MATERIAL A Hazardous Material is any substance or material identified as hazardous under any federal, state, or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or clean-up. To the extent not identified in this Agreement, if a Hazardous Material is discovered at the Worksite, the Design Professional shall not be required to perform Services at the Worksite relating to or in the area of the Hazardous Material without written mutual agreement.

To the extent permitted by Section 7.1.4 and to the extent not caused by the wrongful or negligent acts or omissions of the Design Professional, its agents, successors and assigns, the Owner shall indemnify and hold harmless the Design Professional, its agents, successors and assigns from and against all claims, damages, losses, costs and expenses incurred in connection with any dispute resolution process arising out of or relating to the performance of Services at the Worksite in an area affected by Hazardous Material.

3.3 ADDITIONAL SERVICES The following Services shall be provided by the Design Professional and paid for as Additional Services if they are authorized in advance by the Owner in writing and are not included in Basic Services as set forth in Sections 3.1 and 3.2:

3.3.1 assistance with the preparation of the Owner's program and planning surveys;

3.3.2 surveys, site evaluations, legal descriptions, and aerial photographs;

- 3.3.3 soils, subsurface, and environmental studies, reports, and investigations required for submission to governmental authorities or others having jurisdiction over the Project;
- 3.3.4 artistic renderings, models, and mockups of the Project or any part of the Project;
- ~~3.3.5 inventories of existing furniture, fixtures, furnishings, and equipment which might be under consideration for incorporation into the project;~~
- 3.3.6 interior design and related services, including procurement and placement of furniture, furnishings, artwork, and decorations;
- 3.3.7 making revisions to the Schematic Design, Design Development, or Construction Documents after they have been approved by the Owner, and which are due to causes beyond the control of the Design Professional;
- 3.3.8 design, coordination, management, expediting, and other services supporting the procurement of materials to be obtained or work to be performed by the Owner, including but not limited to telephone systems, computer wiring networks, and other specialty systems which are not otherwise required by this Agreement;
- 3.3.9 estimates, proposals, appraisals, consultations, negotiations, and services in connection with the repair or replacement of an insured loss;
- 3.3.10 the premium portion of overtime work ordered by the Owner, including productivity impact costs, other than that required by the Design Professional to maintain the Project Schedule for causes that are the responsibility of the Design Professional;
- 3.3.11 serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project in which the Design Professional is not a Party;
- 3.3.12 providing Services relating to Hazardous Material discovered at the Worksite;
- 3.3.13 out-of-town travel by the Design Professional in connection with Services, except between the Design Professional's office, the Owner's office, and the Worksite;
- 3.3.14 services requested by the Owner or required by the Work that are not normally part of generally accepted design and construction practice and not otherwise required by this Agreement;
- 3.3.15 furnishing services related to the suspension of construction work;
- 3.3.16 performing formal commissioning services;
- 3.3.17 interior building signage;
- 3.3.18 audio/visual equipment;
- 3.3.19 other additional services as agreed to by the Parties and identified in Article 11.

- 3.4 **QUALIFICATIONS** The Design Professional warrants and represents that the Design Professional and its consultants are duly qualified, licensed, registered, and authorized by law to perform the Services under this Agreement.
- 3.5 **CONSULTANTS** The Design Professional shall not engage the services of any consultant without first obtaining the Owner's written approval, which approval shall not be unreasonably withheld. Such approval by the Owner shall not be deemed to create any contractual relationship between the Owner and any such consultant, except that the Owner shall be considered the intended beneficiary of the performance of their services. The Design Professional shall not include any limits of liability in its agreements with any consultants without the prior written approval of the Owner. The Design Professional shall bind its consultants in the same manner as the Design Professional is bound to the Owner under this Agreement. Consultants retained by the Design Professional for the services covered by this Agreement are identified under Article 11.
- 3.6 **DESIGN PROFESSIONAL'S REPRESENTATIVE** The Design Professional's representative shall possess full authority to receive and act on instructions from the Owner. If the Design Professional changes its representative or his/her authority, the Design Professional shall immediately notify the Owner in writing. The Design Professional's representation is identified under Article 11.
- 3.7 **KEY PROJECT PERSONNEL** The key Project personnel whom the Design Professional shall assign are as set forth in Article 11. Such personnel shall not be changed without the written approval of the Owner, which approval shall not be unreasonably withheld.
- 3.8 **ROYALTIES, PENALTIES, AND COPYRIGHTS** The Design Professional shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems required by the Owner or selected by the Design Professional and incorporated in the design documents of the Design Professional. The Design Professional warrants that it possesses the copyright or permission to use the copyright of materials, methods, or systems selected by the Design Professional and incorporated in the design documents of the Design Professional. The Design Professional shall indemnify, and hold the Owner, the Constructor, and Subcontractors harmless from all suits or claims, damages, losses, and expenses, including, but not limited to reasonable attorney's fees, for infringement of any patent rights or copyrights arising out of such selection.
- 3.9 **CONFIDENTIALITY** Certain information disclosed by the Owner to the Design Professional pursuant to this Agreement may be considered confidential consistent with State and Federal law. The Owner will identify in writing any information that is confidential and the reason therefor. The Design Professional shall treat as confidential and not disclose to third parties, except as necessary for the performance of this Agreement or as required by law, any information designated by the Owner in writing as confidential.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES PROVIDED BY OWNER

- 4.1.1 To the extent the Owner has obtained the information and services identified below, the Owner shall provide them to the Design Professional in a timely manner. The Design Professional shall be entitled to rely on the completeness and accuracy of such information and services:

4.1.1.1 information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports, and investigations;

4.1.1.2 inspection and testing services during construction as required by law or as mutually agreed;

4.1.1.3 unless otherwise provided in this Agreement, necessary approvals, rezoning, easements and assessments, fees, and charges required for the use, occupancy, or renovation of permanent structures, including legal and other required services. The information required by Subsection 4.1.1.1 shall be provided in reasonable detail. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent site conditions. Adjacent property descriptions shall include structures, streets, sidewalks, alleys, and other features relevant to the Work. Utility details shall include available services, lines at the Worksite and adjacent thereto, and connection points. The information shall include public and private information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used in laying out the Work.

4.1.2 The Owner shall promptly report to the Design Professional errors, inconsistencies, and omissions it discovers in the Construction Documents; however, nothing in this subsection shall relieve the Design Professional of responsibility for its own errors, inconsistencies, and omissions.

Services required to correct design errors, omissions, or deficiencies that become apparent during construction or after completion of the Project shall be provided by the Design Professional at no additional compensation.

4.1.3 Approvals by the Owner shall not be deemed to be an assumption of responsibility by the Owner for any error, inconsistency, or omission in the Drawings and Specifications or other documents prepared by the Design Professional, its employees, agents, or consultants. The Owner shall provide all approvals required under this Agreement in a timely manner.

4.2 **OWNER'S REPRESENTATIVE** The Owner's representative shall be fully acquainted with the Project; agrees to furnish the information and services required of the Owner pursuant to Section 4.1 in a timely manner; and shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization, or written notice. If the Owner changes its representative or his/her authority, the Owner shall immediately notify the Design Professional in writing.

4.2.1 The Director of Planning, Design & Construction or designee shall be the principal representative of the Owner. All communications between the Owner and Design Professional shall be made through the Owner's Representative. The Owner's Representative shall be at all meetings with the Design Professional and other institutional personnel during the Project.

- 4.2.2 The Owner's Representative shall meet and confer with the Design Professional and the Design Professional's Consultants as necessary to ensure complete understanding and communication relative to the needs and requirements of the Project. The Owner's Representative shall notify the Design Professional in writing of any change in the written program/requirements.

ARTICLE 5 TIME

- 5.1 **TIME FOR SERVICES** Time is of the essence. The Design Professional shall provide the Services required by this Agreement in conformance with the most recent Project Schedule approved by the Owner.
- 5.2 **DELAYS BY DESIGN PROFESSIONAL** If the progress or completion of the Project is delayed by reason of any error, inconsistency, or omission of the Design Professional which violates its standard of care, the Design Professional shall compensate the Owner for and indemnify it against all damages that may accrue as a result of such delay. In addition, the Design Professional shall provide Services at its own cost, including any overtime costs and expenses, required to make up time lost to the Owner because of such delay. The Owner shall provide prompt written notice to the Design Professional of such delay after the Owner first recognizes the delay.
- 5.3 **DELAYS BY OWNER** If the Design Professional is delayed in the performance of its Services by any act or omission of the Owner, or by changes ordered by the Owner which are due to causes beyond the Design Professional's control, or by a delay authorized by the Owner pending dispute resolution, then the time allotted in the Project Schedule for the Design Professional's Services shall be extended for the period of such delay or the Owner shall authorize the Design Professional to work overtime to make up such lost time, and the Design Professional's compensation shall be equitably adjusted. The Design Professional shall provide prompt written notice to the Owner of such delay after the Design Professional first recognizes such delay.

ARTICLE 6 COMPENSATION AND PAYMENTS

6.1 COMPENSATION FOR BASIC SERVICES

- 6.1.1 Compensation for Basic Services as described in Section 3.1 and 3.2 shall be as set forth in Article 11.

6.2 ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES

- 6.2.1 For Additional Services as described in Section 3.3, compensation shall be stipulated at the time of occurrence.
- 6.2.2 The Design Professional shall be compensated for the Reimbursable Expenses at their actual cost. Reimbursable Expenses are in addition to the compensation for Basic Services and include actual expenditures made by the Design Professional or its Consultants, in the interest of the Project for the expenses listed in Exhibit B and the following subparagraphs:

- 6.2.2.1 Reimbursable travel expenses shall be limited to those incurred in travel on behalf of the Project when authorized by the Owner's Representative.

6.2.2.2 If authorized by the Owner, expenses for reproduction and distribution of documents shall be considered to be reimbursable expenses.

6.2.2.3 The Design Professional shall have the right under this Article to claim reimbursable expenses for any items not specifically covered herein, provided that such reimbursable expenses are identified as such and are authorized in writing by the Owner's Representative prior to being incurred.

6.3 PAYMENTS

6.3.1 The Design Professional shall submit to the Owner for its approval monthly applications for payment for Basic and Additional Services and Reimbursable Expenses, if any, with reasonable supporting detail. The Owner shall pay approved amounts no later than thirty (30) Days after the Design Professional has submitted its applications for payment. No matter how computed in Section 6.1, payments for Basic Services shall not exceed the amounts identified in Article 11 for Basic Services at the completion of each Phase of the Design Professional's Services.

6.3.2 Preparation of Invoices. Invoices for Basic and Additional Services and Reimbursable Expenses shall be prepared in accordance with the Owner's standard invoice and shall be accompanied with documentation for services and reimbursable expenses. Upon receipt of payment from the Owner, the Design Professional shall promptly make payment to its consultants as appropriate.

6.3.2.1 Acceptance of final payment shall constitute a waiver of all claims by the Design Professional and its Consultants for compensation for its Services.

6.3.3 Should there be any claim or obligation asserted before or after final payment is made that arises from the Design Professional's Services, the Design Professional shall reimburse the Owner for any costs and expenses, including attorneys' fees, costs, and expenses, incurred by the Owner in satisfying, discharging, or defending against any such claim or obligation, including any action brought or judgment recovered.

6.3.4 Should the Design Professional or its consultants cause damage to the Project, or fail to perform or otherwise be in default under the terms of this Agreement, the Owner shall have the right to withhold from any payment due or to become due, or otherwise be reimbursed for, an amount sufficient to protect the Owner from any loss that may result. Payment of the amount withheld shall be made when the grounds for the withholding have been removed.

6.3.5 The Design Professional's expense records shall be maintained in accordance with generally accepted accounting principles. Records shall be kept for the duration of the Statute of Limitations that governs when this Agreement was executed and made available to the Owner on request or shall be made available for examination by the Owner's authorized representative at mutually convenient times at no expense to the Owner.

6.3.6 Termination of the Project. In the event the Owner decides for any reason to terminate the Project, the Design Professional shall be paid for services satisfactorily performed and unpaid Reimbursable Expenses incurred prior to receipt of written notice from the Owner.

- 6.3.7 Deferral of the Project. If action on the Project is deferred for more than one year, the Design Professional's compensation shall be subject to renegotiation for the uncompleted portion of the Project.
- 6.3.8 Termination of the Agreement. In the event the Agreement is terminated for any reason, the Design Professional shall be paid for services satisfactorily performed and unpaid Reimbursable Expenses incurred prior to receipt of written notice of termination.

ARTICLE 7 INDEMNITY AND INSURANCE

7.1 INDEMNITY

- 7.1.1 To the fullest extent permitted by law, the Design Professional shall indemnify and hold harmless the Owner, the Owner's officers, directors, members, consultants, agents, employees, successors and assigns (the Indemnitees) from and against all claims, damages, losses and expenses, including but not limited to reasonable attorney's fees arising out of a claim for bodily injury and/or property damage, but only to the extent caused by any wrongful or negligent act or omission in the performance of the terms and conditions of this Agreement of the Design Professional, its consultants or anyone employed by any of them or anyone for whose acts or omissions any of them may be liable. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person.
- 7.1.2 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of the Design Professional, anyone directly or indirectly employed by the Design Professional or anyone for whose acts the Design Professional may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Design Professional under workers' compensation acts, disability benefit acts, or other employment benefit acts. The requirements for insurance are not intended to limit, qualify or restrict the liabilities and obligations otherwise assumed by the Design Professional in this Agreement, including provisions concerning indemnification.
- 7.1.3 The Owner will require any Constructor performing the Work in connection with the Construction Documents produced under this Agreement to hold harmless and indemnify the Owner and the Design Professional, its consultants and each of their officers, agents and employees from any and all claims, losses, damages or expenses arising out of the Constructor's or its Subcontractor's wrongful or negligent acts or omissions in the performance of the Work described in the Construction Documents, but not including liability that may be due to the wrongful or negligent acts or omissions of the Owner, the Design Professional, their Consultants or their officers, agents and employees.
- 7.1.4 To the extent permitted by Iowa Code Chapter 669 and Article VII, Section 1 of the Iowa Constitution the Owner shall indemnify and hold harmless the Design Professional, its officers, directors, members, consultants, agents, employees, successors and assigns from and against all claims, damages, losses and expenses, including but not limited to reasonable attorney's fees arising out of a

claim for bodily injury and/or property damage, but only to the extent caused by any wrongful or negligent act or omission of the Owner in the performance of the terms and conditions of this Agreement.

7.2 INSURANCE

7.2.1 Before commencing its Services and as a condition of payment, the Design Professional and its consultants shall purchase all required insurance at the time of the execution of this Agreement and maintain such insurance for the duration of the Project or to meet statute of limitations, whichever is longer, as will protect it from claims arising out of the performance of its Services under this Agreement.

7.2.2 The Design Professional shall maintain in effect all insurance coverage required under the subsections immediately below with insurance companies lawfully authorized to do business in the state of Iowa and hold a current financial rating from A. M. Best of no less than A-, financial size VII. Total limit requirements can be met through individual primary policies or in combination with an umbrella or excess policy that follows form of the underlying or primary coverages. In addition, the Design Professional shall require its consultants to maintain insurance limits and endorsements listed below.

The below insurance policies, with the exception of Professional, Workers Compensation, and Automobile liability coverage, shall name three entities, State of Iowa; Board of Regents, State of Iowa; and Iowa State University as additional insureds.

The Design Professional and its consultants shall waive subrogation rights against the State of Iowa, and the Board of Regents, State of Iowa, and Iowa State University for any claim paid or payable by any of the below-required insurance policies.

Neither the Owner, nor any additional insured required to be so named under this Agreement shall participate in any policy deductible or retention for claims. Any such deductible or retention shall be the sole responsibility of the Design Professional.

7.2.2.1 WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE applicable to cover liability imposed by State statutes having jurisdiction over Design Professional's employees. Employers' Liability coverage is required with at least the following limits of liability:

- a. \$500,000 each accident.
- b. \$500,000 disease each employee.
- c. \$500,000 disease policy limit.

7.2.2.2 COMMERCIAL GENERAL LIABILITY INSURANCE covering all work and operations under the Agreement, including contractual liability insurance for the liability assumed in subsection 7.2.2 with at least the following limits of liability as a minimum:

- a. \$1,000,000 per occurrence.
- b. \$2,000,000 general aggregate.
- c. \$2,000,000 products/completed operations aggregate.

d. \$1,000,000 personal and advertising injury limit.

The General Liability Insurance must be endorsed with additional insured form CG2026 or equivalent and on a primary and non-contributory basis, form CG 20 01 04 13 or equivalent.

7.2.2.3 COMMERCIAL AUTOMOBILE LIABILITY INSURANCE with a combined single limit for bodily injury and property damage of not less than \$1,000,000 with respect to owned, leased, hired, and non-owned vehicles assigned to or used in performance of this Agreement.

7.2.2.4 UMBRELLA OR EXCESS LIABILITY INSURANCE of no less than \$2,000,000 per occurrence providing excess of the General Liability, Automobile Liability and Employers Liability. Insurance coverage must follow form of the underlying or primary coverage.

~~7.2.3 PROFESSIONAL LIABILITY INSURANCE for claims arising from the negligent performance of services under this Agreement, which shall be written for not less than \$2,000,000 per claim and \$2,000,000 annual aggregate. The Professional Liability Insurance shall contain coverage sufficient to cover all Services performed by the Design Professional for this Project. These requirements shall be continued in effect for the entire term of the Agreement plus five (5) years following final payment to the Design Professional. In the event The Design Professional is required to change carriers during the Project or for the required years after the Project, the Design Professional must notify the Owner immediately and procure coverage that includes all prior acts for the Project's full scope of Work. The deductible or retention shall be paid by the Design Professional.~~

7.2.4 The Design Professional shall furnish to the Owner certificates of insurance evidencing the required coverage and endorsements listed in this Section 7.2, and, if requested by the Owner, a copy of its Professional Liability policy. No policy shall be cancelled without thirty (30) Days' prior written notice to the Owner.

ARTICLE 8 TERMINATION

8.1 TERMINATION BY EITHER PARTY Should either Party be in material breach of this Agreement, the other Party may give written notice to the breaching Party that it intends to terminate this Agreement for default absent appropriate corrective action upon seven (7) Days from receipt. Upon such time and absent appropriate corrective action, the non-breaching party may terminate this Agreement in writing.

8.2 TERMINATION BY OWNER FOR CONVENIENCE Upon seven (7) Days' written notice, the Owner may, without cause, terminate this Agreement with the Design Professional. If this Agreement is terminated pursuant to this section, the Design Professional may recover from the Owner payment for Services performed to the date of termination, in accordance with this Agreement.

8.3 This Agreement shall terminate upon final acceptance of the Work of the Project and acceptance of the scope outlined in Article 3, Paragraph 3.2.8.13 of this Agreement.

ARTICLE 9 DISPUTE MITIGATION AND RESOLUTION

- 9.1 **CONTINUANCE OF SERVICES AND PAYMENT** Unless otherwise agreed in writing, the Design Professional shall continue to perform its Services during any dispute mitigation or resolution proceeding. If the Design Professional continues to perform, the Owner shall continue to make payments in accordance with this Agreement for amounts not in dispute.
- 9.2 **DIRECT DISCUSSIONS** Any dispute between the Design Professional and the Owner regarding, but not limited to Project budget, Project scope, Project layout, or types and quality of materials, shall be submitted in writing within twenty-one (21) days after occurrence of the event giving rise to the claim. The Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If not resolved by the Owner's Representative within ten (10) days, then the Design Professional may submit in writing the issues(s) in dispute to the University Senior Vice President for Finance & Operations as the University President's designee. The determination of the University Senior Vice President for Finance & Operations is the final institutional decision.

ARTICLE 10 MISCELLANEOUS

- 10.1 **OWNERSHIP OF TANGIBLE DOCUMENTS** The Owner shall receive Ownership of all documents, Drawings, Specifications, electronic data, and information prepared, provided, or procured by the Design Professional or by consultants retained by the Design Professional and distributed to the Owner for this Project, upon the making of final payment to the Design Professional or in the event of termination under Article 8, upon payment for all sums due to the Design Professional under Sections 8.1 and 8.2.
- 10.1.1 **COPYRIGHT** The Owner shall own any resulting copyright in the Construction Documents as a work for hire and shall have the right to use, to reproduce, and to make derivative works of the Construction Documents. The Design Professional shall not acquire a copyright for Project Construction Documents but shall be permitted to retain copies including reproducible copies or electronic data of the Drawings, Specifications and other Project documents.
- 10.1.2 **USE OF DOCUMENTS IN EVENT OF TERMINATION** In the event of a termination of this Agreement pursuant to Article 8, the Owner shall own any resulting copyright and have the right to use, to reproduce, and to make derivative works of the Construction Documents to complete the Project provided payment has been made pursuant to Article 6.
- 10.1.3 **OWNER'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT** After completion of the Project, the Owner may reuse, reproduce, or make derivative works from the Documents at the Owner's sole risk, except for the Design Professional's indemnification obligations pursuant to Section 3.9, and the Owner shall be responsible for any and all claims, damages, losses, costs, and expenses, including reasonable attorneys' fees and costs, arising out of or resulting from any such prohibited use.
- 10.1.4 **DESIGN PROFESSIONAL'S USE OF DOCUMENTS** Where the Design Professional has transferred its copyright interest in the Construction Documents under Subsection 10.1.1, the Design Professional may reuse Construction Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole.

- 10.1.5 The Design Professional shall obtain from its consultants rights and rights of use that correspond to the rights given by the Design Professional to the Owner in this Agreement and the Design Professional shall provide evidence that such rights have been secured.
- 10.2 **EXTENT OF AGREEMENT** Except to the extent expressly provided in this Agreement, this Agreement represents the entire and integrated Agreement Between the Owner and the Design Professional and supersedes all prior negotiations, representations and agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of the Owner and Design Professional and not for the benefit of any third party.
- 10.3 **DOCUMENTS IN ELECTRONIC FORM** If the Owner requires that the Owner, Design Professional, and Constructor exchange documents and data in electronic or digital form, prior to any such exchange, the Owner, Design Professional, and Constructor shall agree on a written protocol governing all exchanges, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. Except as otherwise agreed to by the Parties in writing, each Party shall bear its own costs for requirements identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient. Notwithstanding other provisions in this Agreement, printed documents and sets shall not be required if such documents are required to be prepared and transmitted in electronic form.
- 10.4 **ASSIGNMENT** Except as to the assignment of proceeds, neither the Owner nor the Design Professional shall assign their interest in this Agreement without the written consent of the other.
- 10.5 **GOVERNING LAW AND VENUE** This Agreement shall be governed by the law in State of Iowa, and any action or suit arising out of or related to this Agreement shall be initiated in the courts in the county in which the project is located.
- 10.6 **SEVERABILITY** The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.
- 10.7 **NO WAIVER OF PERFORMANCE** The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance.
- 10.8 **TITLES** The title given to the articles and sections are for ease of reference only and shall not be relied upon or cited for any other purpose.
- 10.9 **JOINT DRAFTING** The Parties expressly agree that this Agreement was jointly reviewed, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

10.10 ELECTRONIC TRANSACTIONS AND EXECUTION IN COUNTERPARTS

10.10.1 To the fullest extent permitted by Iowa Code Chapter 554D, the parties agree that electronic records, signatures, systems, formats, transmissions and communications (collectively, Electronic Transactions) may be utilized for this Project and this Agreement and all related documents, records, submissions, approvals, and communications (Ancillary Agreements). The parties agree that electronic signatures are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility. The parties further agree that Electronic Transactions may be relied on for the purposes of binding information transfer for this Project. Unless otherwise agreed to in writing by the parties, the following shall be deemed an acceptable electronic signature for the purposes of this subsection: an electronic symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

In the event the laws, rules, or regulations of a third party governmental agency or entity do not permit the use of Electronic Transactions or Electronic Signatures, then this section shall not apply but only to the extent necessary to comply with the laws, rules, or regulations of the third party governmental agency or entity.

10.10.2 This Agreement, and any Ancillary Agreements, may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to be one and the same agreement. A signed copy of this Agreement, or any Ancillary Agreement, transmitted by any means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement or such Ancillary Agreement.

10.11 RIGHTS AND REMEDIES The Parties' rights, liabilities, responsibilities, and remedies with respect to this Agreement, whether in contract, tort, negligence, or otherwise, shall be exclusively those expressly set forth in this Agreement.

10.12 EQUAL EMPLOYMENT OPPORTUNITY

10.12.1 The Design Professional shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, national origin, sex, age, physical or mental disability or status as a U.S. veteran. The Design Professional shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, religion, national origin, sex, age, physical or mental disability, or status as a U.S. veteran except where it relates to a bona fide occupational qualification. Such action shall include, but not be limited in the following; employment, upgrading, 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 agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owner setting forth provisions of this nondiscrimination clause.

- 10.12.2 The Design Professional shall, in all solicitations or advertisements for employees placed by or on behalf of the Design Professional, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sex, age, physical or mental disability, or status as a U.S. veteran except where it relates to a bona fide occupational qualification.
- 10.12.3 The Design Professional shall send to each labor union or representative of workers with which the Design Professional has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or worker's representative of the Design Professional's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 10.12.4 The Design Professional shall comply with all relevant provisions of state and federal laws and regulations. The Design Professional shall furnish all information and reports requested by the Owner or required by or pursuant to the rules and regulations herein and shall permit access to payroll and employment records by the Owner or the Owner's Representatives for the purposes of investigation to ascertain compliance with such rules, regulations or requests, or with this nondiscrimination clause
- 10.12.5 In the event of the Design Professional's noncompliance with the nondiscrimination clauses of the Agreement or with any of the aforesaid rules, regulations or requests, this Agreement may be canceled, terminated or suspended in whole or in part and the Design Professional may be declared ineligible for further Agreements with the Owner. In addition, the Owner may take such further action, and such other sanctions may be imposed and remedies invoked, as provided by the Code of Iowa as heretofore and hereafter amended, or by the rules and regulations of the Owner or as otherwise provided by law.
- 10.12.6 The Design Professional shall include the provisions of this Article 6 hereof in every agreement with Professional Consultants unless specifically exempted by approval of the Owner, in accordance with the rules and regulations of said Owner, so that such provisions shall be binding on each Professional Consultant. The Design Professional shall take such action with respect to any Professional Consultant as the Owner or the Owner's authorized representative may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Design Professional becomes involved in, or is threatened with, litigation by a Professional Consultant as a result of such direction by the Board of Regents, State of Iowa or its institutions, the Design Professional may request the State of Iowa to enter into such litigation to protect the interests of the State of Iowa.

ARTICLE 11 MODIFICATIONS TO THE AGREEMENT:

11.1 The following Paragraphs have been deleted from this Agreement: None

11.2 The following Paragraphs have been modified in this Agreement:

3.3.5 Procurement and placement of furniture, furnishings, artwork, and decorations;

7.2.3 PROFESSIONAL LIABILITY INSURANCE for claims arising from the negligent performance of services under this Agreement, which shall be written for not less than \$1,000,000 per claim and \$2,000,000 annual aggregate. The Professional Liability Insurance shall contain coverage sufficient to cover all Services performed by the Design Professional for this Project. These requirements shall be continued in effect for the entire term of the Agreement plus five (5) years following final payment to the Design Professional. In the event The Design Professional is required to change carriers during the Project or for the required years after the Project, the Design Professional must notify the Owner immediately and procure coverage that includes all prior acts for the Project's full scope of Work. The deductible or retention shall be paid by the Design Professional.

11.3 The following Paragraphs have been added to this Agreement:

11.3.1 The Design Professional shall comply with all provisions of Iowa State University's Design Standard and Procedures Manual, which can be viewed at [http://www.fpm.iastate.edu/planning/projects/apquestlogin to FDM.asp](http://www.fpm.iastate.edu/planning/projects/apquestlogin%20to%20FDM.asp). Any deviations concepts, methods or products must be called to the attention of, and reviewed with, the Owner's Representative and receive written approval before implementation.

11.3.2 PROJECT REPRESENTATIVES:

11.3.2.1 Owner's Representative Designee is: **Enter Owner's Representative's Name**

11.3.2.2 Design Professional's Representative is: **Enter Design Professional's Representative's Name**

11.3.2.3 Consultants retained by the Design Professional for the services covered by this Agreement are: **Enter Consultant's Firm Name, Representative and Discipline OR type "None"**

11.3.2.4 EZNet Pay Representative is: **Enter Design Professional's Representative's Name**

11.3.3 *(Note for consideration: The basic insurance limit requirements are listed under Article 7.2. Larger projects should have higher limits. Also, LEED coverage needs further review to see if language regarding this should be added.)*

11.3.4 INTERNET BASE PROJECT COMMUNICATION AND MANAGEMENT REQUIREMENTS:

11.3.3.3 All parties are required to acquire and/or maintain at its own expense throughout the Project, the

following hardware, software, services and other electronic processes and versions, including payment for all royalty or license fees for their use, necessary to effectively and reliably transmit and receive Project-related Electronic Communications:

Minimum System and Software Requirements:

- Operating Systems: Windows 7
- Minimum 2 GB RAM
- Processor: PC Compatible, 1.6 GHz cor processor or better
- Minimum 70 MB free hard disk space for application
- Minimum 150 MB of temporary free hard disk space used during installation
- Video Card and display capable of True Color (24-bit) With at least 512 MB memory
- Internet connection (high speed 10 Mbps or higher required)
- Internet Explorer 8.0, 9.0 (32-bit only), or 10.0
- Anit-virus software
- Scanner
- Printer

File formats: The following file formats are permitted. Each Party shall maintain hardware and software as required to read each of these formats and to produce the formats for the types of documents they are responsible for creating or revising.

- PDF, Adobe Portable Document Format
- RTF, Rich Text Format
- GIF, CompuServe Graphic Interchange Format
- JPG, JPEG, or JIFF compliant format
- TIF, Tagged Image File Format
- DWG, Autodesk or Open Design Alliance (free viewers available)
- DOC, Microsoft Word (Recommended)
- XLS, Microsoft Excel (Recommended)
- PPT, Microsoft PowerPoint (Recommended)
- MSG, Microsoft Outlook (Recommended)

- 11.3.3.4 Project communication and management system: An Internet based project communication and management system will be utilized on this project to share information among team

members and conduct and track project communications. The Design Professional is required to participate with the project team and use the system for viewing correspondence and information posted by other project team members, publishing correspondence and information for viewing by other project team members, and logging and/or responding to items such as RFI's and Submittals. There are no fees required for access to the system. The Owner will provide project team members with password protected access privileges to the project web site.

11.3.3.5 Electronic Payment Application System (eznetpay®): The payment process will be conducted utilizing the eznetpay® system. eznetpay® is an online application to manage and transmit invoices from the Design Professional to the Owner for approval. No hardware or software purchase is required to operate eznetpay®. eznetpay® can be operated with access to the internet and a standard email account. Owner will provide training as needed.

11.3.3.5.1 eznetpay® is accessed on the internet at <https://go.eznetpay.com>. Users must enter their logon ID and password. Individual Users of eznetpay® are assigned their own unique and confidential Logon ID and a temporary password to use the system. After the first log on, users will be required to update their password. Invoices are electronically processed through eznetpay's automated process. All supporting documentation relating to invoices, such as reimbursables, monthly progress reports and any other required documents shall be uploaded.

11.3.3.5.2 Design Professional shall provide required user information to the Owner after Agreement is executed. Security levels, access to information and authorization is controlled by the Owner. Digital signatures track action steps taken by individual users. Users may view digital signatures of all authorized persons within the assigned Agreement.

11.3.5 DOCUMENT SUBMITTAL SCHEDULE:

11.3.5.1 The Design Professional shall provide to the Owner the quantity (#) of hardcopies (HC) and the electronic files (E) of the documents identified below. *(Select the appropriate table, Insert specific items as applicable and delete other tables.)*

	Pre-design	Schematic Design Review	Design Development Review	Construction Documents Review
BUILDING PROGRAM	2 HC, E			
SCHEMATIC DESIGN BOOKLETS		21 HC, E		
DRAWINGS	E	E	E	E
PROJECT MANUALS		E	E	E
PROBABLE CONSTRUCTION COST	E	E	E	E
TABULATION OF AREA	E	E	E	E
LIFE CYCLE COST ANALYSIS	E	E	E	E
FINISHES BINDER			1HC	1HC
MONTHLY PROGRESS REPORT	E	E	E	E
OTHER	E	E	E	E

11.3.6 MONTHLY PROGRESS REPORT: *(11.3.6.1 must be kept, 11.3.6.2 is optional)*

11.3.6.1 The Design Professional shall provide a monthly progress report summarizing the activities of the previous month (and outstanding issues or planned activities for the next month). This report shall be furnished to the Owner and shall coincide with the Design Professional's invoice for professional services.

11.3.6.2 The Design Professional may be required to provide monthly progress sets of the Construction Documents during the Construction Documents Phase for Owner review. These documents shall be provided to the Owner in Adobe portable document (.pdf) format. These documents, in conjunction with the progress report required in 11.3.5 will be used to evaluate the Design Professional's invoice.

11.3.7 COMPENSATION AND PAYMENTS: The Owner shall compensate the Design Professional in accordance with the Articles of this Agreement.

11.3.7.1 For Basic Services compensation shall be a stipulated sum of **Amount in Agreement in Words and No/100 Dollars (\$X,XXX,XXX.XX)**. **OR** For BASIC SERVICES, *compensation shall be on the basis of the hourly rates schedule attached hereto (Exhibit B) with a Fixed Maximum not to exceed Amount in Agreement in Words and No/100 Dollars (\$X,XXX,XXX.XX). Said schedule shall govern for the duration of this Agreement. The Design Professional shall be compensated for Consultants services that are included in the Basic Services at a multiple of 1.0 times the amount invoiced.*

11.3.7.2 For Additional Services, compensation shall be stipulated at the time of occurrence.

11.3.7.3 For Reimbursable Expenses, as defined in Article 4, compensation shall not exceed **Amount in Agreement in Words and No/100 Dollars (\$XXX,XXX.XX)**.

11.3.7.4 During the course of the Project, payments to the Design Professional shall not exceed the following percentages of the total compensation due under the Agreement. When total compensation is Stipulated Sum, payment shall be commensurate with the actual work completed, but not exceeding the phase limit. *(Enter \$ amounts into the table and the percentage amount will auto calculate.)*

	Fee Amount in \$'s	Fee Amount as %
PRE-DESIGN SERVICES	\$	
SCHEMATIC DESIGN	\$	
DESIGN DEVELOPMENT	\$	
CONSTRUCTION DOCUMENT	\$	
BIDDING	\$	
CONSTRUCTION	\$	
RECORD DOCUMENTS	\$	
<i>OTHER (DESCRIBE)</i>	\$	
Total	\$	100%

11.3.7.5 Any required backup documentation shall be included with the Design Professional's invoice.

PROJECT: **ENTER PROJECT TITLE**

PROJECT #: **Enter #**

This Agreement becomes effective the day and year signed by the Owner below:

[Use if Project budget is LESS than \$999,999]

Design Professional:

[Enter Firm Name]

By: _____
(Title)

Date: _____

Owner:

[Enter name of Institution]

By: _____
[Enter name of Business Manager]
University Business Manager

Dated: _____

PROJECT: **ENTER PROJECT TITLE**

PROJECT #: **Enter #**

This Agreement becomes effective the day and year signed by the Owner below:

[Use if Project budget is MORE than \$999,999]

Design Professional:

Error! Bookmark not defined.

by: _____

Dated: _____

FEIN No: _____

E-Mail: _____

Recommended by:

Iowa State University

by: _____

David J. Miller
Associate Vice President for Facilities

Dated: _____

by: _____

Kate Gregory
Senior Vice President for University Services

Dated: _____

Owner:

Board of Regents, State of Iowa

by: _____

Robert Donley
Executive Director

c: Project Web Site

g:\Template\PM Clerical\Agreement Templates\DP Agreement-Special Services 04-12
Rev. 05-13

SAMPLE

Error! Bookmark not defined.

EXHIBIT A
PROGRAM REQUIREMENTS / PROPOSAL LETTER

(Attach proposal letter on DP letterhead.)

SAMPLE

EXHIBIT B
ATTACH THE CURRENT ONE FROM OUR WEBSITE

SAMPLE

Error! Bookmark not defined.
EXHIBIT C
SCHEDULE OF HOURLY FEES

(Attach hourly rates for all PSA. Attach schedule of hours for all PSA with T&M fees basis.)

SAMPLE

END OF DOCUMENT.