

Supplement to the Standard Form of Agreement, AIA B101-2017,

**Between University of Delaware (“Owner”) and
XXXXXXXXXX (“Architect”)**

Project Name

For good and valuable consideration, and with intent to be legally bound hereby, the parties agree to modify the Standard Form of Agreement, AIA B101-2017 as follows:

Article 1

1. Article 1.1: Delete and replace with the following: “The Owner’s Initial Information is set forth in its Request for Proposals, UD RFP XXX dated XXXX, 2021 and subsequent Addendum X, dated X, 2021” which is incorporated by reference herein.
2. Article 1.1.1: Insert the following: “The Owner’s program for the Project is as identified in UD RFP XX dated XXX, 2021 and subsequent Addendum X, dated X, 2021. The RFP describes the scope of work to be performed by the Architect. Scope includes XXXX.
3. Article 1.1.2: Insert the following: “The Project’s physical characteristics are XXXX.”
4. Article 1.1.3: Insert the following: “The Owners’ budget for the Cost of the Work is XXX.”
5. Article 1.1.4: Insert the following: “The Owner’s anticipated design and construction milestone dates are to be developed in conjunction with the Architect.”
6. Article 1.1.5: Insert the following: “The Owner intends the following procurement and delivery method for the Project: General Contract Lump Sum Bid”
7. Article 1.1.6: Insert the following: “The Owner’s anticipated Sustainable Objective for the Project is per University of Delaware Sustainability Guidelines.”
8. Article 1.1.7: Insert the following for the Owner’s representative:

Jordan D. Jakubowski, P.E.
Planning & Project Delivery
222 South Chapel Street
Newark, DE 19716

9. Article 1.1.8: Insert the following: “None, unless specifically identified herein.”

10. Article 1.1.9: Insert the following: “None, unless specifically identified herein.”

11. Article 1.1.10: Insert the following for the Architect’s representative:

XXXXX

12. Article 1.1.11.1: Insert the following for the Civil Engineers:

.1 Civil Engineer:

13. Article 1.1.11.2 Delete.

14. Article 1.2: Delete the last sentence beginning “The Owner shall adjust” and replace with the following sentence: “Absent agreement on an appropriate adjustment, the Owner shall be entitled to terminate the Architect’s employment for its convenience under Article 9 hereof.”

15. Article 1.3 – Not applicable.

Article 2

16. Article 2.2: Delete and replace with the following four new sections:

- a. **“2.2.1** Notwithstanding anything to the contrary contained in this Agreement, the Owner and the Architect agree and acknowledge that Owner is entering into this Agreement in reliance on the Architect’s professional abilities in performing the services, duties and obligations required under this Agreement. The Architect accepts the relationship of trust and confidence established between the Architect and Owner by this Agreement. The Architect covenants to perform the Architect’s services: (i) in accordance with the professional skill and care ordinarily employed by competent architects on projects of the same or similar size, complexity and duration located in and about the Mid-Atlantic and Northeast United States; (ii) in compliance with all applicable federal, state, county and municipal laws, regulations, codes, ordinances and orders, including without limitation, building codes, fire codes, handicapped access laws, and other similar laws, regulations, codes ordinances and orders, whether issued by the United

States of America, the State of Delaware, the County of New Castle, the City of Newark, or any other authority having jurisdiction over the Project; (iii) in accordance with the Owner's Design Standards; and (iv) diligently and in the best interests of the Owner. Contract Drawings, Specifications and the other Contract Documents prepared by the Architect for the Project shall be prepared in accordance with the standard of care set forth in this Section. The Architect represents that it knows of no obligations, commitments, or impediments of any kind that will limit or prevent performance of the Architect's services in compliance with such covenants. Should the Architect fail to comply with the standard of care required herein, the Architect's responsibilities under this Agreement, or any applicable laws, regulations, codes, ordinances and orders, the Architect will bear the full cost of correcting the Architect's services and the services of its consultants, and others who have acted in reliance thereon to the extent such cost is caused by the negligence of the Architect, its employees, agents and consultants."

- b. **2.2.2** The Architect shall provide the services required hereunder directly or through such Consultants as it may deem appropriate, which Consultants shall be retained and paid for by the Architect as part of its Basic Services compensation hereunder; provided, however, that the Architect shall be responsible for all services provided hereunder whether such services are provided directly by the Architect, its employees, or by any Consultants hired by the Architect. All persons performing professional duties on the Project, whether as employees of the Architect or as employees of a Consultant engaged by the Architect shall be fully qualified, properly licensed and lawfully authorized to perform the services described in this Agreement, under the laws of the State of Delaware. Any plans, drawings or specifications that, under applicable law, require the seal of a professional architect or engineer, shall be sealed by an architect or engineer duly licensed under the laws of the State of Delaware.
- c. **2.2.3** The Architect's Consultants are identified in Article 1.1.11.1 hereof and shall not be changed without the Owner's prior written consent. The Architect shall, on request, provide the Owner with a fully executed copy of each contract or agreement which the Architect enters into with any Consultant. The Owner reserves the right, in its sole discretion, to prohibit the Architect's employment of any Consultant to which the Owner has a reasonable objection. The Architect, however, shall not be required to employ any Consultant to which it has a reasonable objection.

- d. **2.2.4** For purposes of this Agreement and all services to be provided hereunder, Architect shall not be considered a partner, co-venturer or employee of the Owner, but shall remain in all respects an independent contractor. Architect shall be responsible for the payment of all wages, salaries and other amounts and benefits due Architect's employees and shall be responsible for all reports and obligations relating to social security, income tax withholding, unemployment insurance, worker's compensation and similar matters. Architect shall not have any right or authority to execute any contract, or otherwise to assume any obligation or responsibility in the name of or on behalf of the Owner, except to the extent specifically authorized in writing by the Owner. All services performed and commitments and agreements entered into by Architect in accordance with this Agreement shall be on behalf of, and for the benefit of, the Owner. Unless otherwise set forth in this Agreement, the Architect shall be responsible for paying the fees of all Consultants employed by the Architect without reimbursement from the Owner other than payment of the fee for Basic Services as set forth in this paragraph."

17. Article 2.3: Delete and replace with the following: "The Architect's Project representative, who is either an owner or a principal of the firm, is identified in Article 1.1.10 hereof. The Architect shall not remove and replace its representative, and shall not permit its Consultants to remove and replace their representatives, without the prior written consent of the Owner, which consent shall not be unreasonably withheld. The Owner shall have the right in its sole discretion to direct the removal from the Project of any personnel of the Architect or its Consultants to whom the Owner has made a reasonable objection. The Architect and the Architect's representative shall act and respond to inquiries and requests for information, clarification, and approval, and all other requests contemplated by the Contract Documents, in a timely and proper manner so as not to delay the progress of construction."

18. Article 2.5: Delete and replace with the following:

- a. **"2.5 Required Insurance.** The Architect shall procure and maintain the following insurance protection:

2.5.1 Professional Liability (errors and omissions) insurance for protection from claims arising out of the performance of any architecture, engineering or design services performed or furnished under the Agreement or otherwise and caused by any negligent act, error or omission for which the Architect may become legally liable. Such professional liability insurance shall provide for coverage as follows:

- .1 Limit of Liability – not less than \$5,000,000.00 per claim / \$5,000,000 aggregate;
- .2 Maximum Amount of Deductible - \$25,000.00;
- .3 A specified project endorsement applicable to the Project which provides for a minimum six (6) year extended reporting period at the end of the policy term as part of such coverage and which provides for the indemnification and defense of the Owner from claims and claim expenses arising out of any such negligent act, error or omission;
- .4 Prior Acts Coverage, which covers any such negligent acts, errors or omissions which occurred prior to the effective date of such policy;
- .5 Policy Term - From the effective date of the policy to three (3) years after the date of Substantial Completion of the Project;
- .6 Sixty (60) days prior written notice to the Owner of cancellation of such insurance or any material change with respect thereto.
- .7 Upon written request of the Owner, the Architect shall notify the Owner of any and all claims made against the insurance policy(ies) described in this paragraph 2.5.1 during the Policy Term as set forth herein.

2.5.2. *Worker's or Workmen's Compensation Insurance*, including: (a) Employer's Liability, in an amount not less than \$500,000 or such larger statutory benefits and limits which may be necessary to comply fully with all state and federal requirements; and (b) broad form All States and Voluntary Compensation endorsements;

2.5.3. a broad form ***Commercial General Liability Insurance***, including coverage for, among other things, claims for bodily injury, sickness, disease or death of any person or damage to any property (other than the Work itself), including loss of use resulting therefrom, in an amount not less than \$5,000,000 combined single limit for bodily injury and property damage. Such insurance shall include a waiver of subrogation endorsement in favor of the additional insureds and appropriate endorsements adding the following coverages: Premises

and Operations Liability, Explosion, Collapse and Underground Damage Liability, Personal Injury Liability (with employee and contractual exclusions deleted), Broad Form Property Damage Liability, Broad Form Contractual Liability, supporting Architect's indemnity obligations under this Agreement, Completed Operations and Products Liability for a period of not less than six (6) years following the date of final payment for all services under this Agreement (if available and reasonably priced);

2.5.4. *Automobile Liability Insurance*, including coverage for claims arising out of the ownership, maintenance or use of a motor vehicle, in an amount not less than \$1,000,000 combined single limit for personal injury/property damage;

2.5.5. *Excess Liability Insurance*, in an amount not less than \$5,000,000 per occurrence / \$5,000,000 aggregate and following the form of the above described primary insurance policies.

2.5.6. *Miscellaneous Insurance Provisions*. Except for such longer periods as provided above, the insurance required by sub-paragraphs .1 through .5 above shall be maintained without interruption from the date of commencement of services until the date of final payment. Certificates of Insurance on forms reasonably acceptable to the Owner and original insurance policy endorsements shall be filed with the Owner prior to the commencement of services evidencing the Architect's procurement of all insurance required under this Agreement. Such certificates and insurance policy endorsements shall include the Owner and its authorized representative as additional insured, except with respect to Worker's Compensation and Professional Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations. These Certificates and the insurance policies required by this Article shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least sixty (60) days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the Architect's final request for payment. If the Architect fails to purchase and maintain, or require to be purchased and maintained, any insurance required under this Agreement, or fails to provide the Certificates of Insurance within the required time, the Owner may, but shall not be obligated to, upon five (5) days' written notice to the Architect terminate the Agreement for cause under Article 9 hereof.

19. Articles 2.6 – 2.10: Add the following five new paragraphs to the end of Article 2:

- a. **“2.6 Consultant Insurance.** The Architect will require its Consultants to comply with the insurance provisions of Section 2.5, unless Architect and Owner mutually agree otherwise in writing. Architect will require its Consultants to advise Architect promptly of any changes or lapses of the requisite insurance coverages and Architect will promptly advise Owner in writing of any such changes or lapses in the insurance provided by its Consultants. Architect will monitor all Consultant contracts and insurance certificates for compliance with the insurance and other provisions of this Agreement until the final completion of the Project.”
- b. **2.7 Owner Furnished Information.** The Architect will visit the Project site and will promptly review all information furnished by the Owner, whether generated by the Owner or by a consultant employed by the Owner, and will correlate its review of such information with other information in the possession of, or obtained by, the Architect. Based upon its review, the Architect shall provide prompt written notice to the Owner if the Architect: (a) becomes aware of any errors, omissions or inconsistencies in the information provided by the Owner; (b) believes existing systems and construction must be modified to accommodate the Architect’s design for, and construction of, the Project; or (c) discovers any incongruities between the visible conditions at the Project site, the information furnished by the Owner, and the Architect’s design for, or construction of, the Project. The Architect shall consult with the Owner on any special measures or additional services required of the Owner, including, without limitation, any further investigation which is necessary for the Architect to perform its services free from material errors and omissions, so that the Architect’s design will be properly coordinated with existing conditions, systems and construction. The absence of written notice under this section shall be a representation by the Architect to the Owner that the Architect is in possession of sufficient and accurate information about the Project site and the existing conditions, systems and construction under which the Work will be designed and performed so as to allow its services under this Agreement to be performed and completed without material errors or omissions.”
- c. **2.8 Solvency; Capacity.** The Architect represents, promises and warrants to the Owner that, during the term of this Agreement, the Architect is and will remain financially solvent and possesses sufficient experience, licenses, authority, personnel and working capital to complete the services required under and in accordance with this Agreement, in the time and manner required.

- d. **2.9 Owner Approvals.** The Architect's duties under this Agreement shall not be in any way diminished by reason of any approval or acceptance by Owner, nor shall the Architect be released from any liability by reason of such approval by Owner, it being understood that Owner at all times is relying upon the Architect's skills and knowledge in performing the Architect's services.
- e. **2.10 Defective Services.** The Owner shall have the right to reject any portion of the Architect's services on the Project because of any fault or defect in or arising from the Contract Documents and prompt notice of any such rejection shall be given by Owner to the Architect. Upon receipt of such notice, the Architect shall forthwith perform, without any additional cost or expense to Owner, any and all such services as are required to correct or remedy any negligent act with respect to, or any error or omission in, the Contract Documents, or in connection with the Architect's services, or the services of the Architect's Consultants or other persons employed by the Architect, in accordance with the provisions of this Agreement. Should the Architect refuse or neglect to correct or remedy such defects within a reasonable time after receiving such notice, then Owner shall be entitled to correct or remedy the same at the expense of the Architect, and the Architect shall reimburse Owner upon demand for all expenses incurred by Owner to make such correction or remedy or, in default thereof, the Owner shall be entitled to deduct the cost thereof from all sums then or thereafter due to the Architect under this Agreement. This commitment by the Architect is in addition to, and not in substitution for, any other remedy for defective services which the Owner may have under this Agreement, at law or in equity."

Article 3

- 20. **Article 3.1:** Replace the final sentence with the following: "Services not set forth in this Article 3 are Additional Services, but compensation for such Additional Services will only be paid in accordance with the further provisions of Article 4."
- 21. **Article 3.1.1:** Delete the final clause, beginning "...and report progress..." and replace with "...and issue progress reports as requested by the Owner."
- 22. **Article 3.1.2:** Revise as follows:
 - a. After "...its services..." in the first sentence, insert: "..., and those of the Architect's Consultants,..."

- b. Delete the second sentence.
 - c. In the third sentence delete “such services or information” and replace with “information provided by the Owner or the Owner’s Consultants.”
 - d. Add the following to the end of the paragraph: “Coordination by the Architect under this section shall include resolution by the Architect of any inconsistencies between the services of the Architect and its Consultants and services provided by the Owner or its Consultants. Upon request, the Architect shall provide electronic background drawings for use by the Owner or its Consultants.”
23. Articles 3.1.2.1 – 3.1.2.3: Add the following three (3) new sections:
- a. **“3.1.2.1** Consistent with the standard of care required under this Agreement, the Architect shall perform reasonable investigation of existing conditions and shall take reasonable actions to verify the accuracy of information furnished by the Owner or its Consultants. If, in the Architect’s judgment, exploratory investigations of the site, or of existing conditions on the site, are required for the Design Phase of services, the Architect shall promptly, and before completing its services in such Phase, notify the Owner of the required investigations. The Architect shall proceed with such investigations as may be directed by the Owner. In the absence of notice as set forth herein, the Architect shall be deemed to have represented to the Owner that it has all the information that it may require in order to complete the Design Phase of services in accordance with the standard of care set forth in Article 2.2.1.
 - b. **3.1.2.2** If the Architect receives information furnished by the Owner or its Consultants, the Architect shall indemnify and hold the Owner harmless from all claims, losses, liabilities, costs and expenses, including reasonable attorneys’ fees, that arise from the Architect’s misuse, wrongful re-use or misinterpretation of the information provided.
 - c. **3.1.2.3** The Architect represents and warrants to the Owner that the Architect has visited the site for the Project and thoroughly familiarized itself with the local conditions under which the services required hereunder are to be performed and that the Architect shall correlate its observations of same with all of the requirements of this Agreement and of the Design Phase and Construction Documents

24. Article 3.1.3: Delete and replace with the following: “Time limits for the performance of the Architect’s services are of the essence of this Agreement. A schedule for the performance of the Architect’s services, as set forth in Article 3, including allowances for periods of time required for the Owner’s review, comment and approval and for any necessary approval of submissions by governmental authorities shall be prepared by Architect and submitted to University of Delaware for approval prior to start of design,. The schedule shall include dates for completion of each phase of services and for the commencement and substantial completion of the Work and shall comply with the Owner’s anticipated design and construction milestones as set forth in Article 1.1.4 hereof. If necessary to meet the Owner’s schedule requirements, one or more of the phases of the Architect’s services, as set forth in Article 3, may, with the Owner’s approval, be scheduled to occur concurrently, provided, however, that the quality of the Architect’s services shall not be diminished, nor the compensation increased, by reason of such concurrent scheduling. Upon the Owner’s approval, the schedule may be adjusted as the Project proceeds, and time limits established by any schedule approved by the Owner shall not be exceeded by the Architect, except for reasonable causes beyond the control of the Architect

25. Article 3.1.3.1 The time within which the Architect or Owner shall be required to perform any act or acts under this Agreement shall be extended to the extent that the performance of such act or acts shall be delayed by acts of God, fire, windstorm, flood, epidemic or pandemic, delays or restrictions or orders by governmental bodies, or any other cause beyond the reasonable control of such party; provided, however, that the party entitled to such extension hereunder shall give reasonable notice to the other party of the occurrence causing such delay. Neither party shall be liable to the other for increased costs arising from the delay.

26. Article 3.1.4: Add the following at the end of the section: “If the Architect is aware of a directive or substitution made by the Owner, the Architect shall be deemed to have approved the same unless it promptly objects thereto by written notice to the Owner.”

27. Article 3.1.5: Add the following to the end of the section: “The Architect shall determine and report to the Owner the requirements and procedures for obtaining the approval of any and all governmental authorities having jurisdiction over any aspect of the design of the Project. The Architect shall comply with those requirements in its design and comply with such approval procedures to the extent required by the governmental authorities during all phases of its services under this Agreement. The Architect’s Basic Services under all phases of this Agreement include preparation for and attendance at all public or other hearings as are customarily required with respect to construction projects for, or relating to, the approval of such governmental authorities.”

28. Article 3.1.6: Add the following to the end of the section: “The Architect shall obtain, and retain for the Owner’s use, one complete set of the Construction Documents in such form as is approved by those governmental authorities having jurisdiction over the Project.”

29. Article 3.1.7.1 – 3.1.7.3: Add the following three (3) new sections:

- a. **3.1.7.1** “The Architect shall evaluate the then-current version of the Owner’s design standards and shall prepare the design documents in compliance with such standards. If the Architect believes that a variance from such standards will benefit the Owner, by reducing costs, saving time or providing a higher quality of work, the Architect shall recommend the same to the Owner in writing.
- b. **3.1.7.2** The Architect shall: (1) cooperate with the Owner, (2) make documents, materials and information available to the Owner and Owner’s representative, (3) respond promptly, and in any event within ten (10) days unless otherwise specified, to all requests and inquiries of the Owner and/or Owner’s representative and keep the Owner informed of any changes, requirements or components of the Project design, (4) attend Project meetings as reasonably requested by the Owner’s representative and keep qualified personnel generally available to discuss with the Owner’s representative any aspect of the Project, and (5) prepare drawings, specifications and other documents for each phase of the Services in a manner consistent with the recommendations of the Owner’s representative. If in the professional judgment of the Architect, recommendations furnished by the Owner’s representative are not accurate, do not provide information sufficient for the Architect to proceed with the Services, or are based on a misinterpretation of documents prepared or furnished by the Architect, then the Architect shall notify the Owner’s representative promptly in writing, detailing the Architect’s concerns with such recommendations.
- c. **3.1.7.3** The Owner shall have the right to disapprove any portion of the Architect’s services on the Project, including, but not limited to, Design Phase documents and Construction Documents, on any reasonable basis, including, but not limited to, aesthetics or because, in the Owner’s opinion, the construction cost of the design is likely to render the Project infeasible. In the event that any phase of the Architect’s services is not approved by the Owner, the Architect shall proceed, when requested by the Owner, with revisions to the design or documents prepared for that phase in response to the Owner’s objections. These revisions will be made without additional compensation unless revisions are made to documents, after Design Development, that were previously approved by the Owner, in which case such revision services shall be paid as Additional Services. Basic Services include the services necessary to make revisions to the Drawings, Specifications and other Contract Documents whenever such revisions result from the error, omission or breach of this Agreement by the Architect.”

30. Article 3.2.5: After "...sections and elevations..." in line three, insert: "...and outline specifications,..."
31. Article 3.2.5.1:
- a. At the end of the first sentence, add: "...as set forth in Article 1.1.6 hereof."
 - b. Delete the second sentence in its entirety.
32. Article 3.2.6: Delete and replace with the following: "The Architect's obligations with respect to cost estimating and the Project Budget shall be as follows:
- a. **3.2.6.1 Project Involving Construction Manager.** If the Owner has engaged a Construction Manager at risk, the Architect is not responsible for the preparation of detailed cost estimates. During the Schematic Design Phase, the Architect, as part of its Basic Services, will cooperate with and assist the Owner and the Construction Manager in their preparation of a detailed estimate of probable construction cost. Upon the completion of such estimate, the Owner will establish a total Project Budget, which will include a budget for the construction cost and will notify the Architect thereof. After receiving notice of the Project Budget, the Architect shall design the Work so that its anticipated cost does not exceed the construction cost included within the Owner's Project Budget.
 - b. **3.2.6.2 Project Involving General Contractor.** If the Owner intends to employ a General Contractor, and has not employed a Construction Manager at risk, the Architect shall, as part of its Basic Services, prepare and submit to the Owner an estimate of probable construction cost prepared in accordance with Section 6.3. Upon the completion of such estimate, the Owner will establish a total Project Budget, which will include a budget for the construction cost and will notify the Architect thereof. After receiving notice of the Project Budget, the Architect shall design the Work so that its anticipated cost does not exceed the construction cost included within the Owner's Project Budget."
33. Article 3.2.7: Add the following to the end of the section: "Unless otherwise agreed, the Schematic Design Documents shall be submitted within the time required by the schedule approved pursuant to paragraph 3.1.3 hereof."
34. Article 3.3.3: Delete and replace with the following: "Using the Design Development Documents, the Architect will either: (a) assist the Owner and its Construction Manager in the

preparation of a revised estimate of probable construction cost, or (b) if the Owner intends to employ a General Contractor, prepare a revised estimate of probable construction cost and submit it to the Owner, with an explanation for any changes from the estimate submitted under the previous phase. If the revised estimate of probable Construction Cost exceeds the construction cost included within the Project Budget approved by the Owner during Schematic Design, and the Owner does not authorize in writing an increase in the construction cost component of the Project Budget, the Architect shall revise the Design Development Documents as necessary without additional compensation or an extension of time. Unless otherwise agreed, the Design Development Documents shall be submitted within the time required by the schedule approved pursuant to paragraph 3.1.3 hereof.”

35. Article 3.4.1: Delete and replace with the following: “Based on the approved Design Development Documents, the Architect shall prepare, for the Owner’s approval, Construction Documents consisting of Drawings and Specifications and other Contract Documents setting forth the requirements for the construction of the Project in sufficient detail as will permit an experienced and competent Contractor to determine all items of labor, equipment and material necessary for the full and complete construction of the Project. The requirements for the construction shown on the Drawings and Specifications shall be coordinated one to the other and shall comply with the published requirements of the applicable building, fire and life safety codes of the governmental authorities having jurisdiction over the Project as of the date of this Agreement. Unless otherwise agreed, the Construction Documents shall be submitted within the time required by the schedule approved pursuant to paragraph 3.1.3 hereof.”

36. Article 3.4.4: Delete and replace with the following: “Using the Construction Documents, the Architect will either: (a) assist the Owner and its Construction Manager in the preparation of a revised estimate of probable construction cost, or (b) if the Owner intends to employ a General Contractor, prepare a revised estimate of probable construction cost and submit it to the Owner, with an explanation for any changes from the estimate submitted under the previous phase. If the revised estimate of probable Construction Cost exceeds the construction cost included within the Project Budget approved by the Owner during Schematic Design, and the Owner does not authorize in writing an increase in the construction cost component of the Project Budget, the Architect shall revise the Construction Documents as necessary without additional compensation or an extension of time. Unless otherwise agreed, the Construction Documents shall be submitted within the time required by the schedule approved pursuant to paragraph 3.1.3 hereof.”

37. Article 3.4.6: Add the following new section: “The Construction Documents shall be signed by the Architect and/or its Consultant, as the case may be, and shall be embossed with the seal of a professional duly licensed under the laws of the State of Delaware.”

38. Article 3.5.2.2: Revise as follows:

- a. Insert at the beginning of this section: “(a) For projects in which the Owner intends to employ a General Contractor, and not a Construction Manager at risk...”
- b. After section 3.5.2.2.(a), insert the following new section: “(b) For Projects in which the Owner has engaged a Construction Manager at risk, the Architect shall assist the Owner in bidding the Project by:
 - .1 assisting the Construction Manager in the reproduction of the Bidding Documents for distribution to prospective bidders;
 - .2 participating in a pre-bid conference for prospective bidders;
 - .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda.”

39. Article 3.5.2.3: delete “as an Additional Service” and replace with “as part of its Basic Services”

40. Article 3.5.3.2: Revise as follows:

- a. Insert at the beginning of this section: “(a) For projects in which the Owner intends to employ a General Contractor, and not a Construction Manager at risk...”
- b. After section 3.5.3.2.(a), insert the following new section: “(b) For Projects in which the Owner has engaged a Construction Manager at risk, the Architect shall assist the Owner in bidding the Project by:
 - .1 assisting the Construction Manager in the reproduction of the Proposal Documents for distribution to prospective contractors;
 - .2 participating in a pre-bid conference for prospective contractors;
 - .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to all prospective contractors in the form of addenda.”

41. Article 3.5.3.3: delete as an Additional Service” and replace with “as part of its Basic Services”

42. Article 3.6.1.1: Revise as follows:

- a. Delete the period (.) at the end of the first sentence and insert the following: “..., as modified by any Supplementary General Conditions issued by the Owner.”

- b. In the second sentence, delete the clause beginning "...unless the Owner and Architect..." and replace with the following: "...unless the Owner and the Architect agree to such modifications."
- 43. Article 3.6.1.3: Delete the clause beginning "...and terminates on the date..." and replace with the following: "...and terminates sixty (60) days after the completion and final acceptance of the Work and the issuance of a final Certificate for Payment, except for the Architect's obligations to conduct a one-year warranty inspection which shall be part of its Basic Services hereunder."
- 44. Article 3.6.2.1: Delete the first sentence and replace with the following: "The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner: (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents."
- 45. Article 3.6.2.2: After the words "authority to" in sentences one and two, insert the following: "...recommend that the Owner..."
- 46. Article 3.6.2.3: Delete and replace with the following: "Upon request of the Owner or the Architect, the Architect will advise, and make recommendations to, the Owner concerning the technical, architectural or engineering requirements of the Contract Drawings and Specifications. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness; provided, however, that the Architect's authority to provide such advice and recommendations shall not extend to questions of default, or the termination of the agreement, under the further provisions of the Contract Documents."
- 47. Article 3.6.2.4: Delete each occurrence of the word "decisions" in this section and replace each with "recommendations."
- 48. Article 3.6.2.5: Delete in its entirety.
- 49. Article 3.6.4.3: At the end of the section, add the following: "Based upon its review, the Architect shall provide prompt written notice to the Owner if the Architect: (a) becomes aware of any errors, omissions or inconsistencies in the shop drawings or submittals; (b) believes the design for the remainder of the Work must be modified to accommodate the construction set forth in the shop drawings or submittals; or (c) discovers any

incongruities between the visible conditions at the Project site and the information set forth in the shop drawings or submittals.”

50. Article 3.6.5.1: Revise as follows:

- a. Delete the word “order” in the first sentence and replace with “...recommend to the Owner....”
- b. Delete the second sentence and replace with the following: “The Architect will make recommendations to the Owner for the approval and issuance by the Owner of Change Orders and Construction Change Directives. The Owner or Architect will prepare Construction Change Directives and the Contractor will prepare Change Orders.”

51. Article 3.6.6.1: Delete and replace with the following: “The Architect shall conduct inspections with the Owner, and recommend for the Owner’s approval, the date or dates of Substantial Completion and Final Completion. Upon the Owner’s approval, the Architect shall issue the Certificate of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner’s review and records, written warranties and related documents required by the Contract Documents and assembled by the Architect; and issue a Final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents. The Contract Documents contemplate three inspections that shall be included as part of the Architect’s Basic Services: the Substantial Completion inspection, the Final Completion inspection, and the inspection of completed final punch list items. Final payment to the Architect shall be subject to the Owner’s approval.”

52. Article 3.6.6.5: At the end of the section, add the following: “The Architect shall issue a written report of its inspection to the Owner, including any noted defects or deficiencies in the Work.”

53. Article 3.6.6.6: Add the following new section:

- a. **3.6.6.6** Basic Services include the services necessary to assist and advise the Owner in connection with the start-up and commissioning of all equipment and systems, and to insure the Contractor(s)’ compliance with the Contract Documents regarding provision of written warranties or guarantees, close-out documents, operation and maintenance manuals, as-built drawings, and training of the Owner’s personnel.”

Article 4

54. Article 4.1: Supplemental Services. Delete Articles 4.1.1 – 4.1.3 in their entirety.

55. Article 4.2: Architect's Additional Services. Delete Articles 4.2 – 4.2.5 in their entirety and replace with the following:

- a. Article 4.2.1 "The Owner may request or authorize the Architect to perform services in addition to the Basic Services set forth in Article 3. Such Additional Services are those services described in this Article. The Owner shall compensate the Architect for Additional Services in accordance with Article 11. Notwithstanding anything to the contrary expressed elsewhere in Article 4, no Architect services made necessary by any failure of the Architect to perform its duties, responsibilities or obligations under this Agreement, or by any error or omission in the Architect's performance of services under this Agreement, shall be compensated as an Additional Service."
- b. Article 4.2.2: Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:
 - .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
 - .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
 - .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
 - .4 Advising the Owner in response to an extensive number of Claims by the Contractor; or,
 - .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.
- c. Article 4.2.3: "If the Owner directs the Architect to perform any Additional Services, or the Architect notifies the Owner that Additional Services may be necessary, the Architect shall within seven (7) days of such request or notification submit to the Owner in writing a fee proposal to perform the Additional Services. If the Owner accepts the fee proposal, the parties shall enter into a modification of

services agreement in a form acceptable to the Owner, and Architect shall promptly proceed to perform the Additional Services for the agreed fee. If Architect performs services without Owner's express written authorization, Architect acknowledges that it does so as a volunteer and shall not be entitled to payment for such services. Owner is under no obligation to pay Architect for such Additional Services until the parties execute a modification of services agreement. If the parties disagree in good-faith and on a reasonable basis whether a service is a Basic Service or an Additional Service, and the Owner directs the Architect to proceed with the service as part of its Basic Services, the Architect shall proceed with the services, subject to later resolution in accordance with the provisions of Article 8."

- d. Article 4.2.4: "Notwithstanding any other provision of this Article, the Architect will provide the following limit of services as part of the Basic Services under this Agreement. When such limits are exceeded, the Architect shall notify the Owner in writing and, upon written approval of the Owner, shall be entitled to compensation for additional services in excess of the stated limits:
- i. Two (2) reviews of each shop drawing, product data, sample or other similar submittals of the Contractor;
 - ii. Attendance at all regularly scheduled Project progress meetings, including the preparation and distribution of written minutes thereof;
 - iii. One (1) inspection of the Project, or any phase thereof, for substantial completion, including the review and issuance of a substantial completion punch list and the certification of its completion;
 - iv. One (1) inspection of the Project, or any phase thereof, for final completion, including the review and issuance of a final completion punch list and the certification of its completion;
 - v. One (1) inspection of the Project prior to the expiration of the one-year warranty."

Article 5

56. Article 5.1: Revise as follows:

- a. After "Project" in line two, insert a period (.) and delete the remainder of this section.
- b. At the end of the section, add the following: "Reliance on documents or information obtained by the Architect or provided to it by the Owner relating to

the Project shall be at the Architect's sole risk and expense. The Owner makes no warranties or representations of any kind about such drawing(s), report(s) or information and as part of its compensation for Basic Services hereunder, the Architect has included all costs and expenses associated with any risks incident to its reliance upon such drawing(s), report(s) or information."

- 57. Article 5.2: After "Work" in line two, insert a period (.) and delete the remainder of this section.
- 58. Article 5.6: Delete in its entirety
- 59. Article 5.8: Delete the first sentence.
- 60. Article 5.11: Delete in its entirety.
- 61. Article 5.12: Delete the second sentence.
- 62. Article 5.13: Add the following to the end of this section: "..., as modified by any Supplementary General Conditions issued by the Owner."
- 63. Article 5.15: Delete in its entirety.

Article 6

- 64. Article 6.1: In the second sentence, after "...compensation of the Architect..." insert the following: "..., compensation of the Architect's Consultants..."
- 65. Article 6.2: Delete and replace with the following: "The Owner's Target Budget may be adjusted throughout the Project under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's Target Budget for the Cost of the Work and updated estimates of the Cost of the Work prepared by the Contractor or Construction Manager with the assistance of the Architect represent the parties' best judgment. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's Target Budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared for the Owner."
- 66. Article 6.3: Revise as follows:

- a. Delete “the Architect” in line one, and replace with “...the parties....”
- b. Delete the final sentence of this section.

67. Article 6.7: Delete in its entirety and replace with the following. “If the Owner chooses to proceed under Section 6.6.2 the Architect, without additional compensation, shall assist the Owner in rebidding or renegotiating the Project, within a reasonable time. If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation shall modify the documents which the Architect is responsible for preparing under this Agreement as necessary to comply with the Owner’s budget for the Cost of the Work, and shall assist the Owner in rebidding or renegotiating the Project within a reasonable time. The modification of such documents and the rebidding and renegotiation of the Project shall be the limit of the Architect’s responsibility.

Article 7

68. Articles 7.1 – 7.4: Delete Articles 7.1 – 7.4 in their entirety and replace with the following two new sections:

- a. “**7.1** The Architect acknowledges and agrees that the Project is the property of Owner and the Architect may not use: (i) any Project-related studies, reports, analyses, drawings, specifications, guidelines, or plans prepared by the Architect under this Agreement (“Work Product”) for any purpose not relating to the Project; and (ii) Owner’s name or logo, without Owner’s prior written consent.”
- b. “**7.2** Upon completion of the services hereunder, or if this Agreement is terminated by Owner before completion for its convenience or for cause under Article 9, the Architect shall submit to Owner two (2) full and complete reproductions of the Architect’s Work Product, including copies of the data files generated by the Architect’s word processing or computer aided design (“CAD”) facilities in native and *.PDF format on CD or DVD. All such reproductions shall be the property of Owner which may use them, or may employ others to use them, without the Architect’s permission for any proper purpose relating to the Project including, but not limited to, additions to or completion of the Project, or any subsequent planning, development, design or construction work with respect to the Project.”

69. Article 7.5: Delete the phrase “Except as otherwise stated in Section 7.3”

Article 8

70. Articles 8.1 – 8.4: Delete Sections 8.1.1 and 8.1.3 through 8.4 in their entirety; retain section 8.1.2.
71. Article 8.5: Add the following new Article 8.5:

“ARTICLE 8.5 - CLAIM RESOLUTION

8.5.1 MEDIATION

8.5.1.1 If a dispute arises out of or relates to this Agreement or the breach thereof, and has not been resolved through negotiation, then, at the Owner’s sole and exclusive option and upon written demand served by the Owner upon the Architect, the parties agree first to try to resolve such dispute by mediation under the Construction Industry Mediation Rules of the American Arbitration Association then in effect, before resorting to any other arbitration or judicial proceedings. Nothing contained in this paragraph is intended, or shall be construed, to entitle the Architect (or any Architect) to demand mediation, it being understood and agreed that such determination shall be at the sole election of the Owner.

8.5.1.2 Unless otherwise mutually agreed in writing, the Architect shall carry on with its duties and services under the Contract during any mediation proceedings, and the Owner shall continue to make payments to the Architect in accordance with the Contract.

8.5.2 ARBITRATION

8.5.2.1 All claims, disputes and other matters in question between the Architect and the Owner arising out of, or relating to, the Contract or the breach thereof shall, at the Owner’s sole and exclusive option, be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. The Owner’s election to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Nothing contained in this paragraph is intended, or shall be construed, to entitle the Architect (or the Contractor) to demand arbitration, it being understood and agreed that such determination shall be at the sole election of the Owner.

8.5.2.2 Notice of the Demand for Arbitration shall be filed in writing with the other party and with the American Arbitration Association. The Demand for Arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations; it being understood, however, that such bar

shall not apply to the Owner to the extent of the Owner's right to be free or otherwise exempt therefrom under applicable law.

8.5.2.3 Unless otherwise mutually agreed in writing, the Architect shall carry on with its duties and services under the Agreement during any arbitration proceedings, and the Owner shall continue to make payments to the Architect in accordance with the Agreement.

8.5.2.4 If the Owner becomes a party to any arbitration with the: (a) Architect, whether as a claimant or respondent, which involves a common question of fact or law with any claim, dispute or other matter in question between the Owner and the Contractor arising out of or relating to the Contract or the breach thereof; or (b) one or more separate Contractors, whether as claimant or respondent, which involves a common question of fact or law with any claim, dispute or other matter in question between the Owner and the Architect arising out of or relating to the Agreement or the breach thereof, then the Owner, if it elects to do so, may require: (1) the Architect to arbitrate such claim, dispute or other matter in question in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect; (2) the Contractor or the separate Contractors(s), or all of them, to arbitrate such claim, dispute or other matter in question in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect; and (3) that all such claims be heard in a single arbitration proceeding or that any separate arbitration proceedings involving such claims be consolidated.

8.5.3 THE OWNER'S ELECTION

8.5.3.1 The Owner may elect mediation at any time, regardless of whether arbitration or judicial proceedings have been commenced, and the Owner's commencement of or participation in such arbitration or judicial proceedings shall not waive the Owner's right to later elect mediation.

8.5.3.2 The Owner may elect arbitration at any time, regardless of whether the Owner has previously elected mediation or whether judicial proceedings have been commenced, and the Owner's commencement of or participation in such mediation or judicial proceedings shall not waive the Owner's right to later elect arbitration.

8.5.3.3 The Architect may not commence any judicial proceedings against the Owner without first offering the Owner the opportunity to initially elect mediation or arbitration by notifying the Owner in writing of the nature of the dispute, the factual basis for its claims, and the amount or other relief claimed. If the Owner does not make its election within thirty (30) days after such notice, the Architect may proceed to resolve such dispute through judicial proceedings. The Owner's failure to elect mediation or

arbitration within such thirty (30) day period shall not, however, waive the Owner's right to later elect mediation or arbitration.

8.5.3.4 Except as provided in paragraphs 8.4.3.1 through 8.4.3.3, in the absence of the Owner's election for mediation or arbitration, the parties shall have the right to resolve their disputes under the Agreement through judicial proceedings.

8.5.3.5 With respect to any "judicial proceedings" by and between the parties, it is hereby agreed that they shall be commenced only in: (a) the Complex Commercial Litigation Division of the Superior Court of New Castle County, Delaware; or (b) in default of subject matter jurisdiction therein, in the Superior Court of New Castle, County, Delaware; or (c) in the United States District Court for the District of Delaware, and the parties do hereby consent to both personal jurisdiction and venue in and to proceedings brought in any such court which has competent subject matter jurisdiction. TO THE EXTENT PERMITTED BY LAW, IT IS MUTUALLY AGREED BY AND BETWEEN THE OWNER AND THE ARCHITECT THAT THE RESPECTIVE PARTIES HERETO SHALL, AND THEY DO HEREBY, WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BETWEEN THE PARTIES HERETO OR THEIR SUCCESSORS OR ASSIGNS ON ANY MATTERS ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS AGREEMENT OR THE PROJECT. In the event of any controversy, claim or action being filed respecting this Agreement or the Project, the substantially prevailing party shall be entitled, in addition to all other expenses, costs or damages, to an award of reasonable attorneys' fees as determined by the court or the arbitrators (if the Owner has elected arbitration).

8.5.3.6 A cause of action against the Architect for negligent acts or omissions shall not be deemed to accrue, and any applicable statute or period of limitations shall not be deemed to commence to run, until the later of substantial completion of the Project or the Owner's discovery of the negligent act or omission."

Article 9

72. Articles 9.1 – 9.8: Delete Articles 9.1 – 9.8 in their entirety and replace with the following new sections:

- a. **"9.1.1** The Owner may terminate the Architect's employment under this Agreement for its convenience, without cause of any kind, upon not less than fifteen (15) days' prior written notice to the Architect. In such event, the Architect, as its sole and exclusive remedy, shall be entitled to receive any compensation that may be due to it under the terms of this Agreement for that portion of the services actually and properly completed in accordance with the

terms of this Agreement to the date of such written notice. In no event shall the Architect be entitled to recover from the Owner any consequential damages on account of such termination including, without limitation, lost profits on the services not completed.

- b. **9.1.2** In the event the Architect fails to perform, or materially breaches the terms of this Agreement, the Owner, in addition to any other rights and remedies provided by the Agreement or by law, shall have the right to terminate the Architect's employment under this Agreement for cause upon not less than fifteen (15) days' prior written notice to the Architect. Absent a cure by the Architect within such period deemed satisfactory by the Owner, the Owner may terminate the Architect's employment under this Agreement and may, in addition to its other rights and remedies, withhold any payments that might otherwise have been due to the Architect and apply such sums to any loss, cost or expense reasonably incurred by the Owner as a result of its termination of the Architect's employment under this paragraph.
- c. **9.1.3** If the Owner fails, without legally sufficient justification or excuse, to make payment for services to the Architect when due, the Architect may:

9.1.3.1 Upon five (5) days' prior written notice to the Owner, suspend performance of the services under this Agreement. In the event of such a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension; and

9.1.3.2 Unless payment in full is received by the Architect within ten (10) days of the date of such notice, the Architect may, upon further written notice, terminate this Agreement for non-payment. If this Agreement is terminated for non-payment, the Architect, as its sole and exclusive remedy, shall be entitled to receive any compensation due to it under the terms of this Agreement for that portion of the services actually and properly completed in accordance with the terms of this Agreement to the date of termination. In no event shall the Architect be entitled to recover from the Owner any consequential damages on account of such termination including, without limitation, lost profits on the services not completed."

73. Article 9.9: Replace "Article 7" with "Section 7.2" and delete "...and Section 9.7."

Article 10

74. Article 10.1: Delete and replace with the following: "This Agreement shall be construed and enforced in accordance with the substantive law of the State of Delaware, without giving

effect to its conflicts of laws principles. Both parties have negotiated all of the terms and conditions of this Agreement and have been represented by their own counsel in connection with the preparation of this Agreement. Should any provisions of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms of any such provision shall be more strictly construed against one party or the other by reason of the rule of construction that a document is to be construed most strictly against the party which itself or through its agent prepared the same, it being agreed that the agents of all parties hereto have participated in the preparation of this Agreement.”

75. Article 10.2: Add the following to the end of the section: “...as modified by any Supplementary General Conditions issued by the Owner.”

76. Article 10.3: In the second sentence add a period after “if the lender agrees to assume the Owner’s right’s and obligations under this Agreement” and delete the remainder of the sentence.

77. Article 10.4: Delete and replace with the following: “To the extent applicable, Owner may have to comply with lender requirements, and the parties acknowledge that Owner’s approvals and other actions regarding Architect services may be affected by lender requirements. Architect shall comply with all reasonable requests by Owner or lender for reports, certificates, statements and further services which are not inconsistent with the terms and conditions of this Agreement. However, in the event any such request requires Architect to provide services not already part of the scope of services hereunder, Architect shall be entitled to compensation as an Additional Service.”

78. Article 10.6: Add the following to the end of the section: “Architect shall not design, specify or incorporate in the Drawings or Specifications for the Project, and shall not approve any shop drawings specifying any hazardous materials, in such manner as would violate the requirements of any existing laws, ordinances, codes, rules and regulations, orders and decisions of all government authorities having jurisdiction over the site, the work or any part of either, or would cause substantial damage or risk of substantial damage to the environment, or in such a manner as to leave any residue which could be hazardous to persons or property or cause liability to Owner. For purposes of this Agreement, the term "hazardous materials" shall include, but shall not be limited to, substances currently defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9061 et seq., Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1802, the Resource Conservation Act and Recovery Act., 42 U.S.C. Sec. 6910 et seq., and any other environmental laws, rules and regulations as all of the above may be amended from time to time.”

79. Article 10.7: Delete and replace with the following: “With owner’s prior written approval, the Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect’s promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect’s materials shall not include the Owner’s confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary.”

80. Article 10.8: Delete and replace with the following: “Architect acknowledges that it will have access to, and be provided with, information regarding the business of the Owner (including future plans) that is confidential, non-public and/or proprietary. Architect agrees, on behalf of itself and its employees, to maintain in confidence, and not to disclose to any other person or entity, all information (of every kind) provided or made available to Architect relating to the Project, including, without limitation, the location of the Project and that the Owner is considering pursuing the Project, except to the extent that such information: (a) must be disclosed to the Architect’s employees, consultants or others having a need to know in order for Architect to perform the services; or (b) is publicly available through no fault of Architect. In addition, Architect agrees that the information provided to it will be used solely in connection with the services and will not be used, directly or indirectly, in any manner in competition with or detrimental to the Owner and/or the Project.”

81. Article 10.8.1: Delete.

82. Article 10.9: Delete. Refer to section 10.15 of this Supplement.

83. Articles 10.10 – 10.16: Add the following seven (7) new sections:

- a. **“10.10 Indemnity:** To the fullest extent permitted by law, the Architect agrees to defend, indemnify and hold harmless the Owner, and its trustees, officers, employees, agents, representatives and any affiliated or related entities, against any and all claims, loss, liability, damage, costs and expenses including reasonable attorneys’ fees, that are alleged to have occurred in whole or in part as a result of or due to the negligent actions, errors or omissions of the Architect, its agents, consultants, employees or representatives, or as the result of or due to the Architect’s breach of this Agreement, regardless of whether or not such claim, loss, liability, damage, cost or expense is caused in part by a party indemnified hereunder. The provisions of this Section shall survive termination of the Agreement.

- b. **10.11** All notices and communications concerning this Agreement shall be effective only if delivered to the authorized representatives of Owner and Architect designated in Article 1 of this Supplement, personally or at the addresses indicated therein.
- c. **10.12** If the Architect's proposal is attached to this Agreement, such attachment is solely for the purpose of describing in greater detail the services to be performed by the Architect. Any attached proposal shall not confer any rights or privileges upon the Architect that are inconsistent with the terms of this Agreement.
- d. **10.13** Notwithstanding anything to the contrary contained in this Agreement, Owner's review and approval of any and all documents or other matters required herein shall be for the purpose of providing Architect with information as to Owner's objective and goals with respect to the Project and not for the purpose of determining the accuracy and completeness of such documents, and in no way should any such review and approval alter Architect's responsibilities hereunder and with respect to such documents.
- e. **10.14** No consent or waiver by Owner or Architect shall be effective unless it is in writing and then only to the extent specifically stated. Failure on the part of any party to this Agreement to enforce any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder.
- f. **10.15** If any term of this Agreement is held to be invalid or unenforceable for any reason, such term shall be ineffective to the extent of such invalidity or enforceability without invalidating the remaining provisions of this Agreement, and this Agreement shall remain in effect and be construed as if such invalid or unenforceable term had not been contained herein.
- g. **10.16** This Agreement shall become binding when any one or more counterparts hereof, individually or taken together, shall bear the signatures of the Owner and Architect. Facsimile or *.PDF formatted signature pages shall be treated as originals. This Agreement may be executed in two counterparts, each of which shall be deemed an original.

Article 11

84. Article 11.1: Insert the following: “New Parking Lot on parcels F4 and F5 (\$58,000) Fifty-Eight Thousand Dollars. For Existing Lot on G1 (\$36,500.00) Thirty Six Thousand Five Hundred Dollars, Total Contract Amount (\$94,500.00) Ninety Four Thousand Five Hundred Dollars.”
85. Article 11.2: Delete and replace with the following: “For Additional Services Directed by the Owner under Section 4.3.1, the Owner shall compensate the Architect as follows: in accordance with the hourly rate schedule attached hereto as Exhibit 3.”
86. Article 11.3: Delete and replace with the following: “For Additional Services Due to Special Circumstances under Section 4.3.2, the Owner shall compensate the Architect as follows: in accordance with the hourly rate schedule attached hereto as Exhibit 3.”
87. Article 11.4: Delete “Supplemental and” and Insert “ten per cent (10%).” Delete “or as follows” at the end of the sentence.
88. Article 11.5: Insert the following amounts:
89. Article 11.7: Delete the second sentence and replace with the following: “The hourly billing rates may not be adjusted during the term of this Agreement.”
90. Article 11.8.1: Delete “Supplemental” in the first sentence. Before “incurred” in line two, insert: “...actually and necessarily...”
91. Article 11.8.2: Revise as follows:
- a. Insert “zero percent (0%)”.
 - b. Add the following to the end of the Section: “Architect represents and warrants to the Owner that its Reimbursable Expenses for the Project will not exceed the amounts identified in the stipulated lump sum, subject to adjustment for any authorized Additional Services.”
92. Article 11.9: Delete in its entirety.
93. Article 11.10.1: insert “zero Dollars (“\$0.00)”

94. Article 11.10.1.2: insert "zero Dollars" ("\$.00). Delete the last sentence and replace with "Reimbursement to the Architect for costs incurred in obtaining the Sustainability Certification shall be in accordance with Article 11.8.1."

95. Article 11.10.2.1: After the first sentence, delete the remainder of the section and replace with the following: "Promptly upon receipt, Owner shall review Architect's invoice. If Owner disputes all or any portion of any invoice, Owner shall notify Architect within thirty (30) days of receipt of the disputed invoice, stating the reasons therefore. Any invoice or part of invoice not disputed by shall be paid within 30 days of receipt; provided, that such payment shall not constitute a release or waiver by the Owner of any claims against Architect for errors, omissions, defects, or deficiencies in, or the negligent performance of, services under this Agreement or for the breach thereof by Architect. Owner shall not be required to make payment to Architect on account of any amount disputed by Owner, and any disputed amount shall not be deemed to be due to the Architect, until the matter in dispute has been resolved. If the resolution of the dispute indicates that Architect is entitled to be paid any portion of such disputed amount, then such amount shall be due and payable within thirty (30) days after resolution of the dispute. No interest shall be due or paid on past due amounts."

96. Article 11.10.2.2 Delete in its entirety.

97. Article 11.10.2.3 Delete and replace with the following "Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner for inspection and copying at mutually convenient times. Architect shall prepare and maintain these records in accordance with generally accepted accounting principles and shall preserve them for six (6) years from the completion of the Project."

98. Article 11.10.3: Add the following new section: "**11.10.3** The acceptance by the Architect of final payment under this Agreement shall constitute a full and complete release of the Owner from any and all claims, demands and causes of action whatsoever which the Architect has or may have against Owner under the provision of this Agreement, except those previously made in writing and re-confirmed in writing by the Architect as unsettled at the time of the request for final payment."

Article 12

99. Insert the following: "None, unless specifically stated herein."

Article 13

100. Article 13.1: Delete and replace with the following: “This Agreement contains the entire agreement of the parties hereto regarding the subject matter hereof and there are no other understandings, agreements or representations of any kind or nature, written or oral, between the parties relating to the subject matter of this Agreement. This Agreement supersedes all prior negotiations, documents, agreements, understandings and representations of the parties relating to the subject matter of this Agreement. This Agreement may not be amended or modified except by an instrument in writing signed by both the Owner and Architect. All rights and remedies provided in this Agreement are cumulative and in addition to all other rights and remedies available at law or in equity.”
101. Article 13.2: Revise as follows:
- a. **.1** Add the following at the end of the sub-section: “...as modified herein;”
 - b. **.2** Deleted in its entirety
 - c. **.3** Deleted in its entirety
 - d. Insert the following “Other Exhibits:” (1) The Architect’s Proposal, dated XXX (subject to Article 10.12); (2) Construction Contract Close Out Checklist –**Exhibit No. 2**; (3) Architect’s and Consultants’ Personnel Hourly Billing Rates – **Exhibit No. 3**.

OWNER: UNIVERSITY OF DELAWARE

_____ (Signature)

_____ (Printed Name and Title)

ARCHITECT: XXXXXXXXXXXX.

_____ (Signature)

_____ (Printed Name and Title)