

# Standard Form of Agreement for Interior Design Services

*THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN  
ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.*

1994 EDITION

## AGREEMENT

made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year of \_\_\_\_\_  
*(In words, indicate day, month and year)*

**BETWEEN** the Owner:  
*(Name and address)*

and the Designer:  
*(Name and address)*

For the following Project:  
*(Include detailed description of Project, location, address and scope.)*

The Owner and the Designer agree as set forth below.

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# STANDARD FORM OF AGREEMENT FOR INTERIOR DESIGN SERVICES

## ARTICLE 1

### DESIGNER'S RESPONSIBILITIES

#### 1.1 DESIGNER'S SERVICES

1.1.1 The Designer's services consist of those services performed by the Designer, Designer's employees and Designer's consultants as enumerated in Articles 2 and 3 of this Agreement and any other services included in Article 12.

1.1.2 The Designer's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Upon request of the Owner, the Designer shall submit for the Owner's approval a schedule for the performance of the Designer's services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and for approvals of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Designer or Owner.

1.1.3 The services covered by this Agreement are subject to the time limitations contained in Subparagraph 11.7.

## ARTICLE 2

### SCOPE OF DESIGNER'S BASIC SERVICES

#### 2.1 DEFINITION

2.1.1 The Designer's Basic Services consist of those described in Paragraphs 2.2 through 2.7 and any other services identified in Article 12 as part of Basic Services.

#### 2.2 PROGRAMMING PHASE

2.2.1 The Designer shall consult with the Owner and other parties designated in this Agreement to ascertain the applicable requirements of the Project and shall review the understanding of such requirements with the Owner.

2.2.2 The Designer shall document the applicable requirements necessary for the various Project functions or operations, such as those for existing and projected personnel, space, furniture, furnishings and equipment, operating procedures, security criteria, and communications relationships.

2.2.3 The Designer shall assist the Owner in the preparation of a budget for the Work and a Project schedule.

2.2.4 The Designer shall analyze the feasibility of achieving the Owner's budget for the Work, Project schedule and requirements within the limitations of the building or buildings within which the Project is to be located.

2.2.5 Based on a review and analysis of the functional and organizational relationships, requirements and objectives for the Project, the Designer shall provide a written program of requirements for the Owner's approval.

#### 2.3 SCHEMATIC DESIGN PHASE

2.3.1 Based on the approved written program, the Designer shall prepare for the Owner's approval preliminary diagrams showing the general functional relationships for both personnel and operations.

2.3.2 The Designer shall review with the Owner alternative approaches to designing and carrying out the Work.

2.3.3 Based on the approved relationship diagrams, the Designer shall prepare space allocation and utilization plans indicating partition and furnishings locations and preliminary furniture and equipment layouts.

2.3.4 The Designer shall prepare studies to establish the design concept of the Project, indicating the types and quality of finishes, materials, and furniture, furnishings and equipment.

2.3.5 The Designer shall submit to the Owner a preliminary estimate of the Cost of the Work, based on the recommended design concept and on current costs for projects of similar scope and quality.

#### 2.4 DESIGN DEVELOPMENT PHASE

2.4.1 Based on the approved Schematic Design and any adjustments authorized by the Owner in the program, schedule or Project budget, the Designer shall prepare, for approval by the Owner, Design Development drawings and other documents to fix and describe the size and character of the interior construction of the Project.

2.4.2 The Designer shall prepare such data and illustrations for furniture, furnishings and equipment as may be appropriate for the Project, including specially designed items or elements, to indicate finished appearance and functional operation.

2.4.3 The Designer shall recommend colors, materials and finishes not otherwise specified for the Project.

2.4.4 The Designer shall prepare such other Design Development data, illustrations and documents as may be appropriate for the Project, as described in Article 12.

2.4.5 The Designer shall advise the Owner of any adjustments to the preliminary estimate of the Cost of the Work, based on anticipated unit costs and prices.

#### 2.5 CONTRACT DOCUMENTS PHASE

2.5.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the budget for the Work authorized by the Owner, the Designer shall prepare, for approval by the Owner, Drawings, Specifications and other documents setting forth in detail the requirements for the interior construction necessary for the Project. To the extent required by law, services relating to the preparation of construction documents shall be performed by qualified architects contracted for directly by agreement between Owner and architect. The Work described by such interior construction documents is intended to be performed by the Owner or under one or more Contracts between the Owner and Contractor for construction.

2.5.2 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the Project budget authorized by the Owner, the Designer shall prepare, for approval by the Owner, Drawings, Specifications and other documents setting forth in detail the requirements for the fabrication, procurement, shipment, deliv-

ery and installation of furniture, furnishings and equipment for the Project. Such Work is intended to be performed under one or more Contracts or Purchase Orders between the Owner and Contractor.

**2.5.3** The Designer shall advise the Owner of any adjustments to previous preliminary estimates of the Cost of the Work indicated by changes in requirements or general market conditions.

**2.5.4** The Designer shall assist the Owner in the preparation of the necessary bidding and procurement information.

**2.5.5** The Designer shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

**2.5.6** The Designer, following the Owner's approval of the Drawings and Specifications and of the latest preliminary estimate of the Cost of the Work, shall (1) assist the Owner in obtaining bids or negotiated proposals; (2) assist in awarding and preparing contracts for furniture, furnishings and equipment; and (3) assist, to the extent permitted by law, in awarding and preparing contracts for interior construction. Bidding and negotiation activities shall be coordinated by the Designer.

## **2.6 CONTRACT ADMINISTRATION PHASE**

**2.6.1** The Designer's responsibility to provide Basic Services for the Contract Administration Phase under this Agreement commences with the award of one or more Contracts or the issuance of one or more purchase orders and terminates at the earlier of the issuance to the Owner of the final Certificate for Payment or 60 days after the date of Substantial Completion of the Work.

**2.6.2** Unless otherwise provided in this Agreement, the Designer shall provide administration of the contracts for furniture, furnishings and equipment only as set forth below and in the edition of ASID Document ID320, General Conditions of the Contract for Furniture, Furnishings and Equipment, current as of the date of this Agreement. The administration of contracts for construction, if provided by the Designer, shall be governed by separate contractual arrangements unless otherwise provided in Article 12.

**2.6.3** Duties, responsibilities and limitations of authority of the Designer shall not be restricted, modified or extended without written agreement of the Owner and Designer with consent of the Contractors, which consent shall not be unreasonably withheld.

**2.6.4** The Designer shall be a representative of and shall advise and consult with the Owner (1) during the Contract Administration Phase until final payment to the Contractors is due; and (2) as an Additional Service, at the Owner's direction, from time to time until expiration of any applicable correction periods. The Designer shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written instrument.

**2.6.5** The Designer shall assist the Owner in coordinating schedules for delivery and installation of the Work, but shall not be responsible for malfeasance, neglect or failure of a Contractor, Subcontractor, Sub-subcontractor or material supplier to meet their schedules for completion or to perform their respective duties and responsibilities.

**2.6.6** The Designer shall visit the Project premises as deemed necessary by the Designer, or as otherwise agreed by the Owner

and Designer in writing to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work is being performed in a manner indicating that the Work when completed will be in accordance with the Contract Documents. However, the Designer shall not be required to make exhaustive or continuous inspections at the Project premises to check the quality or quantity of the Work. On the basis of such observations as a designer, the Designer shall keep the Owner informed of the progress and quality of the Work, and shall endeavor to guard the Owner against defects and deficiencies in the Work. *(More extensive representation on the Project premises may be agreed to as an Additional Service, as described in Paragraph 3.2.)*

**2.6.7** The Designer shall not have control over or charge of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction, fabrication, procurement, shipment, delivery or installation, or for safety precautions and programs in connection with the Work, since these are solely the Contractors' responsibility under their respective Contracts. The Designer shall not be responsible for the Contractors' schedules or failure to carry out the Work in accordance with the Contract Documents. The Designer shall not have control over or charge of acts or omissions of Contractors, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

**2.6.8** The Designer shall at all times have access to the Work wherever it is in preparation or progress.

**2.6.9** Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractors shall communicate through the Designer. Communications by and with the Designer's consultants shall be through the Designer.

**2.6.10** Based on the Designer's observations and evaluations of the Contractors' Applications for Payment, the Designer shall review and certify the amounts due the Contractors.

**2.6.11** The Designer's certification for payment shall constitute a representation to the Owner, based on the Designer's observations at the Project premises as provided in Subparagraph 2.6.6 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Designer's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to final completion and to specific qualifications expressed by the Designer. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Work is without latent defects, or that the Designer has (1) made exhaustive or continuous inspections at the Project premises to check the quality or quantity of the Work; (2) reviewed the means, methods, techniques, sequences or procedures of construction, fabrication, procurement, shipment, delivery or installation; (3) reviewed copies of requisitions received from Subcontractors and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) ascertained how and for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**2.6.12** Unless otherwise provided, the Designer's duties shall not extend to the receipt, inspection and acceptance on behalf

of the Owner of furniture, furnishings and equipment at the time of their delivery to the premises and installation. The Designer is not authorized to reject nonconforming Work, sign Change Orders on behalf of the Owner, stop the Work or terminate a Contract on behalf of the Owner.

**2.6.13** The Designer shall interpret and decide matters concerning performance of the Owner and Contractors under the requirements of the Contract Documents on written request of either the Owner or Contractor. The Designer's response to such requests shall be made with reasonable promptness and within any time limits agreed upon.

**2.6.14** The Designer shall render written decisions within a reasonable time on all claims, disputes or other matters in question between the Owner and Contractor relating to the execution or progress of the Work as provided in the Contract Documents.

**2.6.15** Interpretations and decisions of the Designer shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Designer shall endeavor to secure faithful performance by both Owner and Contractors, shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith.

**2.6.16** The Designer's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

**2.6.17** The Designer's decisions on claims, disputes or other matters, including those in question between the Owner and Contractors, except for those relating to aesthetic effect as provided in Subparagraph 2.6.16, shall be subject to arbitration as provided in this Agreement and in the Contract Documents.

**2.6.18** The Designer shall review final placement and inspect for damage, quality, assembly and function in order to determine that furniture, furnishings and equipment are in accordance with the requirements of the Contract Documents.

**2.6.19** The Designer shall recommend to the Owner rejection of Work which does not conform to the Contract Documents. Whenever the Designer considers it necessary or advisable for implementation of the intent of the Contract Documents, the Designer will have authority to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed.

**2.6.20** The Designer shall review and approve or take other appropriate action upon Contractors' submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Designer's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner or of separate contractors, while allowing sufficient time in the Designer's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor; all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The Designer's review shall not indicate approval of safety precautions or, unless otherwise specifically stated by the Designer, of the means, methods, techniques, sequences or procedures of construction, fabrica-

tion, transportation or installation. The Designer's approval of a specific item shall not constitute approval of an assembly of which the item is a component, and the Designer's approval of a Sample or Samples shall not constitute approval of that item as delivered and installed if not in conformance with such approved Sample.

**2.6.21** The Designer shall prepare Change Orders and Change Directives, with supporting documentation and data if deemed necessary by the Designer as provided in Subparagraphs 3.1.1 and 3.4.3, for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.

**2.6.22** The Designer shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive 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 Contractors, and shall issue final Certificates for Payment upon compliance with the requirements of the Contract Documents.

## **2.7 SERVICES RELATED TO SEPARATE CONSULTANTS**

**2.7.1** The Designer shall provide information to and incorporate information received in a timely manner from those separate consultants retained by the Owner and identified in Article 12 whose activities directly relate to the Project.

## **ARTICLE 3**

### **ADDITIONAL SERVICES**

#### **3.1 GENERAL**

**3.1.1** The services described in this Article 3 are not included in Basic Services unless so identified in Article 12, and they shall be paid for by the Owner as provided in this Agreement in addition to the compensation for Basic Services. The services described under Paragraphs 3.2 and 3.5 shall only be provided if authorized or confirmed in writing by the Owner. If services described under Contingent Additional Services in Paragraph 3.4 are required due to circumstances beyond the Designer's control, the Designer shall notify the Owner prior to commencing such services. If the Owner deems that such services described under Paragraph 3.4 are not required, the Owner shall give prompt written notice to the Designer. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Designer shall have no obligation to provide those services.

#### **3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES**

**3.2.1** If more extensive representation at the Project premises than is described in Subparagraph 2.6.6 is required, the Designer shall provide one or more Project Representatives to assist in carrying out such responsibilities at the Project premises.

**3.2.2** Project Representatives shall be selected, employed and directed by the Designer, and the Designer shall be compensated therefor as agreed by the Owner and Designer. The duties, responsibilities and limitations of authority of Project Representatives shall be described as provided for in Article 12.

**3.2.3** Through the observations by such Project Representatives, the Designer shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Designer as described elsewhere in this Agreement.

### **3.3 PURCHASING OF FURNITURE, FURNISHINGS AND EQUIPMENT BY THE DESIGNER**

**3.3.1** If the Owner and Designer agree that the Designer will purchase furniture, furnishings and equipment on behalf of the Owner with funds provided by the Owner, the duties related to such services shall be set forth in a separate exhibit to this Agreement.

### **3.4 CONTINGENT ADDITIONAL SERVICES**

**3.4.1** Making revisions in Drawings, Specifications or other documents when such revisions are:

- .1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;
- .2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or
- .3 due to changes required as a result of the Owner's failure to render decisions in a timely manner.

**3.4.2** Providing services required because of significant changes in the Project, including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for furniture, furnishings and equipment, except for services required under Subparagraph 5.2.5.

Providing services, to the extent permitted by law, with respect to significant changes in the method of bidding or negotiating and contracting for interior construction, except for services required under Subparagraph 5.2.5.

**3.4.3** Preparing Drawings, Specifications and other documentation and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and Change Directives.

**3.4.4** Providing services in connection with evaluating substitutions proposed by Contractors and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.

**3.4.5** Providing consultation concerning replacement of Work damaged by fire or other cause, and furnishing services required in connection with the replacement of such Work.

**3.4.6** Providing services made necessary by the default of a Contractor or Subcontractor, by major defects or deficiencies in their Work, or by failure of performance of either the Owner or a Contractor under a contract for the Work.

**3.4.7** Providing services in evaluating an extensive number of claims submitted by Contractors or others in connection with the Work.

**3.4.8** Providing services in connection with a public hearing, arbitration proceeding or legal proceeding, except where the Designer is a party thereto.

**3.4.9** Preparing documents for alternate, separate or sequential bids or providing out-of-sequence services requested by the Owner.

### **3.5 OPTIONAL ADDITIONAL SERVICES**

**3.5.1** Providing financial feasibility or other special studies.

**3.5.2** Providing planning surveys, building evaluations or comparative studies of prospective buildings.

**3.5.3** Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

**3.5.4** Providing services relative to future facilities, systems, furniture, furnishings and equipment.

**3.5.5** Providing services to investigate existing conditions or facilities or to make measured drawings thereof.

**3.5.6** Making investigations, inventories of materials or furniture, furnishings and equipment, or valuations and detailed appraisals of existing facilities, furniture, furnishings and equipment, and the relocation thereof.

**3.5.7** Providing services to verify the accuracy of drawings or other information furnished by the Owner.

**3.5.8** Providing services involving travel for the purpose of evaluating materials, furniture, furnishings and equipment proposed for the Project.

**3.5.9** Providing special studies for the Project such as analyzing acoustical or lighting requirements, record retention, communications and security systems.

**3.5.10** Providing services for the design or selection of graphics and signage.

**3.5.11** Providing services in connection with the procurement of works of art.

**3.5.12** Receipt, inspection and acceptance on behalf of the Owner of furniture, furnishings and equipment at the time of delivery to the premises and installation.

**3.5.13** Providing services in connection with the work of a construction manager or separate consultants retained by the Owner except as required by Paragraph 2.7.

**3.5.14** Providing detailed estimates of the Cost of the Work.

**3.5.15** Providing detailed quantity surveys or inventories of material, equipment and labor.

**3.5.16** Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

**3.5.17** Providing analyses of maintenance and operating costs.

**3.5.18** Providing services for planning tenant or rental spaces.

**3.5.19** Providing services relating to the Work of a Contractor after issuance to the Owner of the final Certificate for Payment for such Contractor's Work, or in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of the Work.

**3.5.20** Preparing a set of reproducible record drawings or specifications showing significant changes in the Work made during the performance thereof based on marked-up prints, drawings and other data furnished by the Contractors to the Designer.

**3.5.21** Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted interiors practice.

#### **ARTICLE 4**

##### **OWNER'S RESPONSIBILITIES**

**4.1** The Owner shall provide full information regarding requirements for the Project.

**4.2** The Owner shall establish and update an overall budget for the Project, including the Cost of the Work, the Owner's other costs and reasonable contingencies related to all of these costs.

**4.3** If requested by the Designer, the Owner shall furnish evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement.

**4.4** The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Designer in order to avoid unreasonable delay in the orderly and sequential progress of the Designer's services.

**4.5** If services are required under Paragraph 3.3, the Owner shall provide and maintain working funds with the Designer, if required, to pay invoices charged to the Project for materials and furnishings, to secure cash discounts and for required deposits.

**4.6** The Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

**4.7** The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services the Owner may require to verify the Contractors' Applications for Payment or to ascertain how or for what purposes the Contractors have used the money paid by or on behalf of the Owner.

**4.8** The drawings, specifications, services, information, surveys and reports provided by the Owner pertaining to the Project shall be furnished at the Owner's expense, and the Designer shall be entitled to rely upon the accuracy and completeness thereof.

**4.9** Prompt written notice shall be given by the Owner to the Designer if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

**4.10** The proposed language of certificates or certifications requested of the Designer or Designer's consultants shall be submitted to the Designer for review and approval at least 14 days prior to execution. The Owner shall not request certifications that would require knowledge or services beyond the scope of this Agreement.

**4.11** The Owner shall provide suitable space for the receipt, inspection and storage of materials, furniture, furnishings and equipment.

**4.12** The Owner shall contract for all temporary and permanent telephone, communications and security systems required for the Project so as not to delay the performance of the Designer's services.

**4.13** The Owner shall be responsible for the relocation or removal of existing facilities, furniture, furnishings and equipment, and the contents thereof, unless otherwise provided by this Agreement.

#### **ARTICLE 5**

##### **COST OF THE WORK**

###### **5.1 DEFINITION**

**5.1.1** The Cost of the Work shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Designer, including the costs of the Contractor's management or supervision of construction or installation.

**5.1.2** The Cost of the Work shall include the cost at current market rates of labor, materials, furniture, furnishings and equipment furnished by the Owner, and equipment designed, specified, selected or specially provided for by the Designer, including the costs of the Contractor's management or supervision of construction or installation, plus a reasonable allowance for the Contractors' overhead and profit. In addition, a reasonable amount for contingencies shall be included for market conditions at the time of bidding and changes in the Work during the Contract Administration Phase.

**5.1.3** The Cost of the Work does not include the compensation of the Designer and Designer's consultants, the cost of financing or other costs which are the responsibility of the Owner as provided in Article 4.

###### **5.2 RESPONSIBILITY FOR THE COST OF THE WORK**

**5.2.1** Evaluations of the Owner's Project budget, preliminary estimates of the Cost of the Work and detailed estimates of the Cost of the Work, if any, prepared by the Designer represent the Designer's best judgment as a design professional familiar with interior design. It is recognized, however, that neither the Designer nor the Owner has control over the cost of labor, materials, furniture, furnishings or equipment, over the Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Designer can not and does not warrant or represent that bids or negotiated prices will not vary from the Owner's Project budget or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Designer.

**5.2.2** No fixed limit of the Cost of the Work shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget, unless such fixed limit has been agreed upon in writing and signed by the parties hereto. If such a fixed limit has been established, the Designer shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, furniture, furnishings and equipment, finishes, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids to adjust the Cost of the Work to the fixed limit. Fixed limits, if any, shall be increased in the amount of an increase in the Contract Sum occurring after execution of the Contracts.

**5.2.3** If bidding or negotiating has not commenced within 90 days after the Designer submits the proposed Contract Documents to the Owner, any Project budget or fixed limit of the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the interiors industry between the date of submission of the Contract Documents to the Owner and the date on which proposals are sought.

**5.2.4** If a fixed limit of the Cost of the Work (adjusted as provided in Subparagraph 5.2.3) is exceeded by the lowest bona fide bids or negotiated proposals, the Owner shall:

- .1 give written approval of an increase in such fixed limit;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 if the Project is abandoned, terminate in accordance with Paragraph 8.3; or
- .4 cooperate in revising the Project scope and quality as required to reduce the Cost of the Work.

**5.2.5** If the Owner chooses to proceed under Clause 5.2.4.4, the Designer, without additional charge, shall modify the Contract Documents as necessary to comply with the fixed limit, if established as a condition of this Agreement. The modification of the Contract Documents shall be the limit of the Designer's responsibility arising out of the establishment of a fixed limit. The Designer shall be entitled to compensation in accordance with this Agreement for all services performed, whether or not the Contract Administration Phase is commenced.

## **ARTICLE 6**

### **USE OF DESIGNER'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

**6.1** The Drawings, Specifications and other documents prepared by the Designer for this Project are instruments of the Designer's service for use solely with respect to this Project and, unless otherwise provided, the Designer shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The Owner shall be permitted to retain copies, including reproducible copies, of the Designer's Drawings, Specifications and other documents for information and reference in connection with the Owner's use and occupancy of the Project. The Designer's Drawings, Specifications or other documents shall not be used by the Owner or others on other projects, for additions to this Project or for completion of this Project by others, unless the Designer is adjudged to be in default under this Agreement, except by agreement in writing and with appropriate compensation to the Designer.

**6.2** Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Designer's reserved rights.

## **ARTICLE 7**

### **ARBITRATION**

**7.1** Claims, disputes, or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise.

**7.2** Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration 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 statutes of limitations.

**7.3** No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by the Owner, Designer and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

**7.4** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

## **ARTICLE 8**

### **TERMINATION, SUSPENSION OR ABANDONMENT**

**8.1** This Agreement may be terminated by either party upon not less than seven days' written notice, should the other party substantially fail to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

**8.2** If the Project is suspended by the Owner for more than 30 consecutive days, the Designer shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Designer's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Designer's services.

**8.3** This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Designer in the event that the Project is permanently abandoned. If the Project is abandoned by the Owner for more than 90 consecutive days, the Designer may terminate this Agreement by giving written notice.

**8.4** Failure of the Owner to make payments to the Designer in accordance with this Agreement shall be considered substantial nonperformance and cause for termination.

**8.5** If the Owner fails to make payment when due the Designer for services and expenses, the Designer may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Designer within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Designer shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.

**8.6** In the event of termination not the fault of the Designer, the Designer shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Paragraph 8.7.

**8.7** Termination Expenses are in addition to compensation for Basic and Additional Services, and include expenses which are directly attributable to termination. Termination Expenses shall be computed as a percentage of the total compensation for Basic and Additional Services earned to the time of termination, as follows:

- .1 Twenty percent of the total compensation for Basic and Additional Services earned to date if termination occurs before or during the Programming or Schematic Design Phases; or
- .2 Ten percent of the total compensation for Basic and Additional Services earned to date if termination occurs during the Design Development Phase; or
- .3 Five percent of the total compensation for Basic and Additional Services earned to date if termination occurs during any subsequent phase.

## **ARTICLE 9**

### **MISCELLANEOUS PROVISIONS**

**9.1** Unless otherwise provided, this Agreement shall be governed by the law of the principal place of business of the Designer.

**9.2** Terms in this Agreement shall have the same meaning as those in ASID Document ID320, General Conditions of the Contract for Furniture, Furnishings and Equipment current as of the date of this Agreement.

**9.3** Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion, or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion.

**9.4** The Owner and Designer waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent covered by property insurance during construction and installation, except such rights as they may have to the proceeds of such insurance set forth in the edition of ASID Document ID320, General Conditions of the Contract for Furniture, Furnishings and Equipment, current as of the date of this Agreement. The Owner and Designer shall each require similar waivers from their contractors, consultants and agents.

**9.5** The Owner and Designer, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Designer shall assign this Agreement without the written consent of the other.

**9.6** This Agreement represents the entire and integrated agreement between the Owner and Designer and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Designer.

**9.7** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Designer.

**9.8** Unless otherwise provided in this Agreement, the Designer and Designer's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project premises, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

**9.9** The Designer shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Designer's promotional and professional materials. The Designer's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Designer in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Designer on the construction sign and in the promotional materials for the Project.

**9.10** Except with the Owner's knowledge and consent, the Designer shall not (1) accept trade discounts; (2) have a significant financial interest; or (3) undertake any activity or employment or accept any contribution, if it would reasonably appear that such activity, employment, interest or contribution could compromise the Designer's professional judgment or prevent the Designer from serving the best interests of the Owner.

## **ARTICLE 10**

### **PAYMENTS TO THE DESIGNER**

#### **10.1 DIRECT PERSONNEL EXPENSE**

**10.1.1** Direct Personnel Expense is defined as the direct salaries of the Designer's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

#### **10.2 REIMBURSABLE EXPENSES**

**10.2.1** Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Designer and Designer's employees and consultants in the interest of the Project, as identified in the following clauses.

**10.2.1.1** Expense of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; long-distance communications; and fees paid for securing approval of authorities having jurisdiction over the Project.

**10.2.1.2** Expense of reproductions, postage and handling of Drawings, Specifications and other documents.

**10.2.1.3** If authorized in advance by the Owner, expense of overtime work requiring higher than regular rates.

**10.2.1.4** Expense of renderings, models and mock-ups requested by the Owner.

**10.2.1.5** Expense of additional insurance coverage or limits, including professional liability insurance, requested by the Owner in excess of that normally carried by the Designer and Designer's consultants.

**10.2.1.6** Expense of computer-aided design and drafting equipment time when used in connection with the Project.

### **10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES**

**10.3.1** The initial payment set forth in Paragraph 11.1 is the minimum payment under this Agreement.

**10.3.2** Subsequent payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service on the basis set forth in Subparagraph 11.2.2.

**10.3.3** If and to the extent that the time initially established in Paragraph 11.7 of this Agreement is exceeded or extended through no fault of the Designer, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Subparagraph 11.4.1.

**10.3.4** When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not completed, compensation for those portions of the Project shall be payable to the extent that services are performed on those portions, in accordance with the schedule set forth in Subparagraph 11.2.2., based on (1) the lowest bona fide bid or negotiated proposal; or (2) if no such bid or proposal is received, the most recent preliminary estimate of the Cost of the Work or detailed estimate of the Cost of the Work for such portions of the Project.

### **10.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES**

**10.4.1** Payments on account of the Designer's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Designer's statement of services rendered or expenses incurred.

### **10.5 PAYMENTS WITHHELD**

**10.5.1** No deductions shall be made from the Designer's compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractors, or on account of the cost of changes in the Work other than those for which the Designer has been found to be liable.

### **10.6 DESIGNER'S ACCOUNTING RECORDS**

**10.6.1** Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

**ARTICLE 11**  
**BASIS OF COMPENSATION**

The Owner shall compensate the Designer as follows:

**11.1 AN INITIAL PAYMENT** of \_\_\_\_\_ Dollars (\$) \_\_\_\_\_ ) shall be made upon execution of this Agreement and credited to the Owner's account as follows:  
*(Indicate whether initial payment will be credited to the first, to the last or proportionately to all payments on the Owner's account.)*

**11.2 BASIC COMPENSATION**

**11.2.1 FOR BASIC SERVICES**, as described in Article 2, and any other services included in Article 12 as part of Basic Services, Basic Compensation shall be computed as follows:  
*(Insert basis of compensation, including stipulated sums, multiples or percentages, and identify phases to which particular methods of compensation apply, if necessary.)*

**11.2.2** Where compensation is based on a Stipulated Sum, Percentage of the Cost of the Work or Area Fee progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable:  
*(Insert additional phases as appropriate.)*

Programming Phase:	percent (	%)
Schematic Design Phase:	percent (	%)
Design Development Phase:	percent (	%)
Contract Documents Phase:	percent (	%)
Contract Administration Phase:	percent (	%)
<hr/>		
Total Basic Compensation	one hundred percent	(100%)

**11.3 FOR PROJECT REPRESENTATION BEYOND BASIC SERVICES**, as described in Paragraph 3.2, compensation shall be computed as follows:

**11.4 COMPENSATION FOR ADDITIONAL SERVICES**

**11.4.1 FOR ADDITIONAL SERVICES OF THE DESIGNER**, as described in Articles 3 and 12, other than (1) Additional Project Representation as described in Paragraph 3.2; and (2) services included in Article 12 as part of Basic Services but excluding services of consultants, compensation shall be computed as follows:  
*(Insert basis of compensation, including rates and/or multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply, if necessary.)*

**11.4.2 FOR SERVICES OF CONSULTANTS**, including consultants identified in Article 12, a multiple of \_\_\_\_\_ ( \_\_\_\_\_ ) times the amount billed to the Designer for such services.  
*(Identify specific types of consultants in Article 12, if required.)*

**11.5** FOR REIMBURSABLE EXPENSES, as described in Paragraph 10.2, and any other items included in Article 12 as Reimbursable Expenses, a multiple of ( ) times the expenses incurred by the Designer, the Designer's employees and consultants in the interest of the Project.

**11.6** Payments are due and payable ( ) days from the date of the Designer's invoice. Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Designer.  
*(Insert rate of interest agreed upon.)*

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Designer's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

**11.7.** IF THE BASIC SERVICES covered by this Agreement have not been completed within ( ) months of the date hereof, through no fault of the Designer, extension of the Designer's services beyond that time shall be compensated as provided in Subparagraphs 10.3.3 and 11.4.1.

**ARTICLE 12**  
**OTHER CONDITIONS OR SERVICES**

*(Insert descriptions of other services, identify Additional Services included within Basic Compensation and modifications of the payment and compensation terms included in this Agreement.)*

This Agreement entered into as of the day and year first written above.

OWNER

DESIGNER

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

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

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Printed name and title)*



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