

AGREEMENT
for
Commissioning Services

This Agreement for Commissioning Services (this "Agreement"), by and between The Ohio State University (the "OWNER") whose contact person shall be the Project Manager designated below or successor, and [redacted] (the "Commissioning Authority"), whose contact person and address are set forth below.

WHEREAS, The Ohio State University is operating under Chapters 123 and 153 of the Ohio Revised Code and it is the intention of The Ohio State University in the exercise of its powers as set forth in Sections 9.33 through 9.333, both inclusive, of the Ohio Revised Code to obtain Commissioning services for the following project (the "Project"), which is to be designed by the design professional named below (the "Design Professional"), and the construction managed by the construction professional (the "Construction Manager"), named below:

Project Name: [redacted]
Project Number: [redacted]

Owner	Commissioning Authority
Facilities Operations and Development Design and Construction 400 Central Classroom Building 2009 Millikin Road Columbus, OH 43210	< Company > < Contact person > < Address > < City, State, Zip Code >
Project Manager	
[redacted]	

Design Professional	Construction Manager
< Company > < Contact person > < Address > < City, State, Zip Code >	< Company > < Contact person > < Address > < City, State, Zip Code >

WHEREAS, unless adjusted as provided herein, total compensation payable to the Commissioning Authority under this Agreement will not exceed [redacted] (\$[redacted]); and

WHEREAS, the Commissioning Authority desires to provide and is capable of providing Commissioning services for the Project;

NOW, THEREFORE, in consideration of the mutual promises herein contained, the Owner and the Commissioning Authority agree as follows:

ARTICLE I. RESPONSIBILITIES OF COMMISSIONING AUTHORITY

1.1 Commissioning Authority's Services

- 1.1.1 Scope of Services; Applicable Law. The Commissioning Authority shall provide Commissioning services for the Project in accordance with the terms of this Agreement. The Commissioning Authority shall provide such services in accordance with the applicable Sections of the Ohio Revised Code and any applicable State rules and regulations, any applicable federal and local statutes, ordinances, rules and regulations, the applicable Notice issued pursuant to Section 9.331 of the Ohio Revised Code (the "Notice") and the Commissioning Authority's Technical Proposal for the Project (the "Commissioning Authority's Technical Proposal").
- 1.1.2 Construction Budget. The total amount available for the construction of the Project is [REDACTED] (\$[REDACTED]) (the "Construction Budget"). The Owner shall provide written notice to the Commissioning Authority of any change in the Construction Budget. It is recognized that the Commissioning Authority and the Owner do not have control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions.
- 1.1.3 Timeliness; Standard of Care. The Commissioning Authority shall provide Commissioning Services in accordance with professional standards of skill, care and diligence in a timely manner in accordance with the Project Schedule.
- 1.1.4 Commissioning Schedule. Within thirty (30) days after the execution hereof, the Commissioning Authority shall submit for approval by the Owner a Commissioning Schedule for the performance of Commissioning Service, which shall include allowances for reasonable periods of time required for the review and approval of items by the Owner and for approvals of authorities having jurisdiction over the Project. Unless the Owner notifies the Commissioning Authority of objections to the Commissioning Schedule within thirty (30) days of receipt thereof, the Owner shall be deemed to have approved the Commissioning Schedule. The Commissioning Authority shall not deviate from the Commissioning Schedule. Should the Commissioning Authority deem it necessary to change the Commissioning Schedule, the Commissioning Authority shall submit written notice to the Owner. The Commissioning Authority shall change the schedule after the Owner approves the change. The Commissioning Authority shall develop the Commissioning Schedule from the management schedule developed by the Construction Manager (CM), and design schedule by the design professional.
- 1.1.5 Personnel. The identities of the principals and the extent of their participation in performing the Commissioning Authority's services as set forth in the Commissioning Authority's Technical Proposal shall not be altered without the written consent of the Owner.
- 1.1.6 Non-Discrimination. The Commissioning Authority represents that the Commissioning Authority is in compliance with all applicable equal employment opportunity requirements under law, if required by Section 153.59 of the Ohio Revised Code or any other applicable state or federal law.
- 1.1.7 Consultants. The Commissioning Authority may provide services through one or more consultants (the "Consultants") employed by the Commissioning Authority; provided, however, the Commissioning Authority shall remain accountable to the Owner for all duties and

obligations of the Commissioning Authority under this Agreement. Unless waived or otherwise modified in writing by the Owner upon written request of the Commissioning Authority, no Consultant shall be retained upon terms inconsistent with this Agreement. The identity of any Consultant and the extent of such Consultant's participation in providing Commissioning Services as set forth in the Commissioning Authority's Technical Proposal shall not be changed without the consent of the Owner. All such Consultant services shall be deemed a part of the Basic Services of this Contract unless otherwise agreed to in writing by the Owner and incorporated into this agreement by amendment pursuant to Article 9.5.2 .

- 1.1.8 Drug-Free Workplace. The Commissioning Authority shall make a good faith effort to ensure that no employee of the Commissioning Authority will purchase, transfer, use or possess or be under the influence of alcohol or illegal drugs or abuse legally obtained drugs while on or about the Project. Except for the term "employee," terms in this Subparagraph are used as defined in Chapter 123:1-76 of the Ohio Administrative Code.
- 1.1.9 Ethics. The Commissioning Authority represents that it is familiar with all applicable ethics law requirements, including without limitation Sections 102.04 and 3517.13 of the Ohio Revised Code, and certifies that it is in compliance with such requirements.
- 1.1.10 Ohio Services. Unless otherwise authorized by the Owner, the Commissioning Authority's services shall be performed within the State.
- 1.1.11 Limitation of Authority. The Commissioning Authority shall not have any authority to bind the Owner for the payment of any costs or expenses without the express written approval of the Owner, as applicable. The Commissioning Authority shall act on behalf of the Owner only to the extent provided herein. The Commissioning Authority's authority to act on behalf of the Owner shall be modified only by an amendment in accordance with Subparagraph 9.5.2.
- 1.1.12 Approval or Disapproval of Commissioning Authority's Services. The Owner shall have the right to reasonably disapprove, by written notice stating the reasons for the disapproval, any portion of the Commissioning Authority's services for the Project. In the event that any of the Commissioning Authority's services are disapproved by the Owner, the Commissioning Authority shall proceed, when requested by the Owner, with revisions to the services to attempt to satisfy the objections. The Commissioning Authority acknowledges that any review or approval by the Owner of any services performed by the Commissioning Authority pursuant to this Agreement shall not relieve the Commissioning Authority of the Commissioning Authority's responsibility to properly and timely perform such services.

ARTICLE II. SCOPE OF COMMISSIONING AUTHORITY'S BASIC SERVICES

2.1 General

- 2.1.1 The Commissioning Authority shall provide the Basic Services set forth in Paragraphs 2.2 through 2.5., both inclusive and the Commissioning Authority's Technical Proposal dated <<DATE OF PROPOSAL>>.

2.2 Programming and Design Phase

- 2.2.1 Design Intent Document. The Commissioning Authority shall prepare a Design Intent Document (DID) to record in quantitative and verifiable terms the performance goals for the systems to be commissioned. This document shall be prepared in coordination with the Program of Requirements (POR) and updated in accordance with subsequent design meetings. This document shall be submitted to the Owner for review. This document shall be updated periodically during each phase of the project.
- 2.2.2 Construction Document Review. The Commissioning Authority shall review construction documents at 50% and 95% completion and verify that the systems as designed meet the design intent are commissionable and are maintainable. The Commissioning Authority shall review the construction documents related to the commissioning of the building as well as the overall maintainability of the building.
- 2.2.3 Commissioning Specification. The Commissioning Authority shall provide a commissioning specification for inclusion in Division I of the Design Professional's project specification. The Commissioning Authority shall also develop test procedures and checklists for inclusion in the contract documents.
- 2.2.4 Coordination Meetings. The Commissioning Authority shall form a commissioning team and conduct commissioning specific coordination meetings to review progress relating to commissioning tasks. The commissioning team shall consist of representatives from the design professional, the construction manager, the Owner's project manager and staff from Facilities Design and Construction, Operations, Environmental Health and Safety, the Building Occupants, and the commissioning coordinators.

2.3 Construction Phase

- 2.3.1 Commissioning Coordination. The Commissioning Authority shall coordinate commissioning activities during construction and shall establish commissioning milestones during the Programming and Design Phase for inclusion in the bidding documents. The Commissioning Authority shall conduct meetings with the contractors and other members of the commissioning team.
- 2.3.2 Document Review. The Commissioning Authority shall assist with the review of Shop drawings and Operation & Maintenance manuals and resolve commissioning related comments with the contractors and Design Professional. The Commissioning Authority shall direct these activities through the construction manager.
- 2.3.3 Finalize Training Plan and Schedule Training. The Commissioning Authority shall finalize training plan and schedule training for operation and maintenance staff.
- 2.3.4 Finalize Test Procedures and Develop Testing Schedules. The Commissioning Authority shall finalize test procedures for actual systems supplied and installed. The Commissioning Authority will develop a schedule and sequence of equipment and systems to be tested, for inclusion in the construction documents prior to bidding.
- 2.3.5 Update Design Intent Document. The Commissioning Authority shall review construction documents and construction phase documentation and update the Design Intent Document.

2.4 Testing and Training

- 2.4.1 Coordinate Training. The Commissioning Authority shall coordinate equipment and system training of the Operations staff.
- 2.4.2 Air and Water Balancing. The Commissioning Authority shall monitor progress of air and water balancing and shall verify that it is completed before the start of field testing.
- 2.4.3 Conduct Verification Tasks. The Commissioning Authority shall conduct verification tasks in accordance with approved test procedures and submit daily reports. The Commissioning Authority shall generate a Corrective Action Report for each deficiency and verify resolution of each Corrective Action Report.
- 2.4.4 Commissioning Report. The Commissioning Authority shall document all commissioning activities in a Final Commissioning Report and submit it to the Owner for final review and acceptance of the building systems.

2.5 Warranty

- 2.5.1 Warranty Submittals. All warranty submittals from the Contractors shall be made to the Construction Manager. The Construction Manager shall forward this paperwork to the Commissioning Authority. The Commissioning Authority will maintain all warranty information for the project. Upon project completion or upon the direction of the Owner, all warranty submittals shall be turned over to the Owner.
- 2.5.2 Conduct Deferred Verification Tests. The Commissioning Authority shall conduct verification tests that could not be performed before the official turn-over of systems from contractor to the Owner. The procedure for these tests shall be the same as during Testing and Training Phase.
- 2.5.2 Warranty Meetings. The Commissioning Authority shall conduct warranty meetings approximately 10 months into the warranty period for the identified equipment and/or systems. The outcome of the meeting shall be a list of Warranty items to be addressed and any system modifications to meet design intent.
- 2.5.3 Update Final Commissioning Report. The Commissioning Authority shall update the Final Commissioning Report to document any Warranty related activities.

ARTICLE III. ADDITIONAL SERVICES

3.1 The Commissioning Authority shall provide the following services as Additional Services only when identified in the Commissioning Authority’s proposal and approved in writing the Owner.

Item	Amount
xx	xx

Authorization to provide Additional Services must be obtained in writing before providing the Additional Services.

ARTICLE IV. RESPONSIBILITIES OF THE OWNER

- 4.1 Required Actions. The Owner shall review, approve, or take such actions as are required of them by this Agreement, the Contract Documents, and applicable law in a reasonable and timely manner.
- 4.2 Instructions to Contractors. All instructions of the Owner to Contractors shall be through or in consultation with the Construction Manager, with notice to the Design Professional and the Commissioning Authority.
- 4.3 Owner's Requirements. The Owner shall provide full information regarding its requirements for the Project including without limitation the Program of Requirements, any agreements related to the Project, design and construction standards, and work rules that shall set forth the Owner's use, design, time and financial objectives, constraints, and criteria, including space requirements and relationships, flexibility and expandability, time constraints imposed by fiscal and budgetary considerations, special equipment, and systems and site requirements.
- 4.4 Owner's Requirements. The Owner shall provide a copy of the Architect/Engineer's Agreement for Professional Design Services to the Commissioning Authority upon request.
- 4.5 Owner's Representative. The Owner shall designate an Owner's Representative, i.e., an individual authorized to act on the Owner's behalf with respect to the Project to the extent provided in the Contract Documents. If the Owner changes the Owner's Representative, the Owner shall notify the Commissioning Authority immediately in writing.
- 4.6 Notice to Commissioning Authority. If the Owner observes or otherwise becomes aware of any defective work or other fault or defect in the Project, prompt notice thereof shall be given to the Commissioning Authority.
- 4.7 Legal Representation. The Owner shall not be responsible to provide or pay for any legal representation of the Commissioning Authority.

ARTICLE V. COMPENSATION

5.1 Direct Personnel Expenses

- 5.1.1 Definition. Direct Personnel Expense means the portion of direct salaries and wages of all personnel of the Commissioning Authority or any Consultants, as applicable, whether stationed at the Commissioning Authority's principal or branch offices or stationed at the Project field office, including professional, technical, management, administrative, and clerical employees, and principals engaged on the Project related to their time devoted to 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, social security contributions, insurance, sick leave, holidays, vacations, pension, and profit sharing pursuant to plans qualified under federal law, and similar benefits related to their time devoted to the Project. Direct Personnel Expense shall not include any bonus or similar plan or arrangement related to the Commissioning Authority's performance on or profit from the Project.

- 5.1.2 Records. Direct Personnel Expense for the Commissioning Authority’s employees for such hours of their time as are devoted to performing Basic Services to the Project shall be determined in accordance with the Commissioning Authority’s Technical Proposal. Such Direct Personnel Expense shall be evidenced by time records certified by the Commissioning Authority.
- 5.1.3 Limit. The Commissioning Authority shall use all reasonable means to minimize Direct Personnel Expense. In all events, total Direct Personnel Expense shall not be incurred without the written approval of the Owner and an amendment in accordance with Subparagraph 9.5.2.

5.2 Reimbursable Expenses

- 5.2.1 Definition. Reimbursable Expenses means actual expenditures incurred by the Commissioning Authority or its Consultants in the interest of the Project approved by the Owner for reproduction of Construction Documents for distribution to Bidders, building permits, soil or other testing or special inspections, and, if requested by the Owner, Project Professional Liability Insurance and reformatting Project Record Submittals to a computer medium different than a computer medium used by the Design Professional. No other expenditures shall be Reimbursable Expenses unless so provided in an amendment in accordance with Subparagraph 9.5.2.
- 5.2.2 Limits on Transportation and Living Expenses. The Commissioning Authority has included <<some number>> roundtrips in the technical proposal related to the <<Project Name (Project Number)>>. The cost for additional transportation and living expenses in connection with the Project shall be in accordance with OBM Administrative Travel Rule, OAC 126-1-02, as amended from time to time.

Check website for most recent rates to use in contract:
<http://www.obm.ohio.gov/mppr/travel.asp>

- 5.2.3 Conference Receipts. Receipts are required for all conference fees, meals, lodging, and miscellaneous conference expenses exceeding one dollar. Attach a copy of the conference program when submitting your travel expense report.
- 5.2.4 Limits on Tangible Property. The determination of whether to purchase or rent tangible property as Reimbursable Expenses must be approved in advance by the Owner. The Commissioning Authority shall maintain a current inventory of all such property and any such property that has been purchased and has a useful life after Project Closeout shall be delivered to the Owner.
- 5.2.5 Limit. The Commissioning Authority shall use all reasonable means to minimize Reimbursable Expenses. In all events, total Reimbursable Expenses shall not exceed [redacted] (\$[redacted]), without the written approval of the Owner and an amendment in accordance with Subparagraph 9.5.2. Reimbursable Expenses for the following items shall not exceed the respective amounts and will not be reimbursed without itemized receipts:

Item	Amount
xx	xx

5.3 Basis of Compensation

- 5.3.1 Basic Fee. For Basic Services provided by the Commissioning Authority and all Consultant(s), the Owner shall pay the Commissioning Authority a Basic Fee in accordance with Paragraph 5.4

hereof in the amount of [REDACTED] (\$ [REDACTED]). A change in the Basic Fee may be made only by an amendment in accordance with Subparagraph 9.5.2.

5.3.2 Extent of Basic Fee. The Commissioning Authority's Basic Fee includes all compensation for Basic Services, including without limitation compensation for all personnel of the Commissioning Authority and any Consultants other than those listed in Paragraph 5.1, operating expenses of the Commissioning Authority's principal office and branch offices, any part of the Commissioning Authority's capital expenses, including interest on the Commissioning Authority's capital employed for the Project, overhead or expenses of any kind, any costs incurred due to the negligence of the Commissioning Authority, the Commissioning Authority's general advertising, federal, state or local income, sales or other taxes, state franchise taxes and qualification fees, and membership in trade, business or professional organizations.

5.3.3 Total Compensation. The total compensation of the Commissioning Authority and all Consultant(s) shall consist of the Basic Fee and any approved Reimbursable Expenses.

5.4 Method and Terms of Payment

5.4.1 Basic Fee. Payment of the Basic Fee shall be made monthly in proportion to services performed in each Phase in accordance with the following percentages of the Basic Fee:

Programming and Design Phase	16%
Construction Phase	38%
Testing Phase	40%
Warranty Phase (1 year after occupancy)	2%
Project Closeout	4%

Any balance of the final 4% of the Basic Fee shall be paid upon Project Closeout as follows: one-half after resolution of all Punch-Lists by the Commissioning Authority and one-half after completion of all Punch-List items to the reasonable satisfaction of the Owner. The Owner may waive the withholding of any final balance or part thereof, if Commissioning Authority has performed to the reasonable satisfaction of the Owner. The Basic Fee, including without limitation the final 6% thereof, shall be subject to all setoffs in favor of the Owner for claims against the Commissioning Authority. Payments for Basic Services shall be based upon a properly completed Commissioning Authority's Pay Request and shall be made within the applicable time limits provided by Section 126.30 of the Ohio Revised Code.

5.4.2 Payments by Commissioning Authority. Within ten (10) business days of receipt of payment made pursuant to this Agreement, the Commissioning Authority shall pay all portions thereof due to Consultants and to those who provided items, the expenses of which are Reimbursable Expenses.

5.4.3 Compensation for Extension of Project Time. If the Commissioning Authority notifies the Owner not less than thirty (30) days before the time for completion of the Project set by the Project Schedule approved pursuant to Subparagraph 2.4.4, that such time for completion is reasonably expected to be exceeded by more ten percent (10%) through no fault of the Commissioning Authority, the compensation, if any, for Basic Services to be rendered and Reimbursable Expenses to be incurred during such extended period shall be negotiated to the mutual reasonable satisfaction of the Owner and the Commissioning Authority. If, as a result of

such negotiation, the Owner agrees that the Commissioning Authority shall be paid additional compensation, an amendment to that effect shall be executed in accordance with Subparagraph 9.5.2 before the Commissioning Authority renders any services made necessary by such extension of the time of completion, unless otherwise agreed in writing by the Owner.

- 5.4.4 Compensation for Change of Scope of Project or Construction Budget. The Scope of the Project is defined by Article II. If the Owner materially changes the Scope of the Project after the Schematic Design Phase at any time after the execution of this Agreement through no fault of the Commissioning Authority, any necessary adjustment in the compensation of the Commissioning Authority shall be negotiated to the mutual reasonable satisfaction of the Owner and the Commissioning Authority. If, as the result of such negotiation, the Commissioning Authority and the Owner agree that the Commissioning Authority shall be paid additional compensation, an amendment to that effect shall be executed in accordance with Subparagraph 9.5.2 before the Commissioning Authority renders any services made necessary by such change in the Scope of the Project, unless otherwise agreed in writing by the Owner.

ARTICLE VI. INSURANCE, INDEMNIFICATION, AND FINANCIAL ASSURANCE

6.1 Insurance

- 6.1.1 Casualty Insurance. The Commissioning Authority shall carry and maintain at the Commissioning Authority's cost, with companies authorized to do business in Ohio, all necessary liability insurance (which shall include as a minimum the requirements set forth below) during the term of this Agreement:
- a. Workers' Compensation and employer's liability insurance to the full extent as required by applicable law;
 - b. Commercial general liability coverage for bodily injury and property damage, including limited contractual liability coverage, in not less than the following amounts:
 - i. General Aggregate Limit:
\$2,000,000 each occurrence;
 - ii. Each Occurrence Limit:
\$1,000,000 each occurrence; and
 - c. Commercial automobile liability coverage, including non-owned and hired, in an amount not less than \$1,000,000.
- 6.1.2 Project Professional Liability Insurance. For all Projects with a Construction Budget of \$5,000,000 or more, the Commissioning Authority shall, in consultation with the Owner, obtain proposals for project specific professional liability insurance to cover the Commissioning Authority, and any subconsultants to the Commissioning Authority in an amount of not less than \$2,000,000. The term of coverage of such insurance will include the design period, the construction period, and a period of not less than two (2) years after the contract completion.
- 6.1.3 Professional Liability Insurance. When the Owner does not elect to procure Project Professional Liability Insurance the Commissioning Authority the Commissioning Authority shall maintain

Professional Liability Insurance to protect against claims arising from the performance of the Commissioning Authority's services caused by any negligent acts, errors, or omissions for which the Commissioning Authority is legally liable ("Professional Liability Insurance"). Such Professional Liability Insurance shall be in an amount not less than <Refer to RFP for Amount> per claim and in the annual aggregate. The Commissioning Authority shall keep such insurance in effect for as long as the Commissioning Authority may be held liable for its performance of services for the Project. If the Professional Liability Insurance is written on a claims-made basis, such insurance shall have a retroactive date no later than the date on which the Commissioning Authority commenced to perform services relating to the Project. The insurance company issuing the Professional Liability Insurance policy must be authorized to do business in Ohio and have a rating of at least "A" status as noted in the most recent edition of the Best's Insurance Reports.

- 6.1.4 Certificates. The Commissioning Authority shall provide the Owner with certificates of insurance evidencing the required coverage and amounts, including without limitation any certificates of renewal of insurance. The certificates of insurance shall contain a provision that the policy or policies will not be canceled without thirty (30) days' prior written notice to the Owner.

6.2 **Indemnification**

- 6.2.1 Indemnification by Commissioning Authority Generally. To the fullest extent permitted by law, the Commissioning Authority shall and does agree to indemnify and hold harmless the Owner and their members, officers, employees and representatives from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, which (a) arise out of, are caused by, or result from performance of the Commissioning Authority's services hereunder and (b) are attributable to bodily injury, personal injury, sickness, disease or death of any person, or to damage to or destruction of property, including the loss of use and consequential damages resulting therefrom, but (c) only to the extent they are caused by any negligent acts, errors, or omissions of the Commissioning Authority, anyone directly or indirectly employed by the Commissioning Authority, or anyone for whose acts the Commissioning Authority is legally liable. This subparagraph is intended to be and shall be construed as consistent with and not in conflict with Section 2305.31 of the Ohio Revised Code.
- 6.2.2 Intellectual Property Indemnification. To the fullest extent permitted by law, the Commissioning Authority shall and does agree to indemnify and hold harmless the Owner and their members, officers, employees and representatives from and against all claims, damages, losses, liens, causes of action, suits, judgments, and expenses (including attorney's fees and other costs of defense) of any nature, kind, or description that result from any claimed infringement of any copyright, patent, or other intangible property right caused by the Commissioning Authority, anyone directly or indirectly employed by the Commissioning Authority, or anyone for whose acts the Commissioning Authority is legally liable. The Commissioning Authority shall not be required to indemnify and hold harmless such people for such matters when the claimed infringement occurs in materials provided by the Owner.

ARTICLE VII. DISPUTE RESOLUTION PROVISIONS

- 7.1 Mediation. Instead of, or in addition to, the procedures set forth below, the Owner and the Commissioning Authority may, by written agreement, submit any claims, requests, disputes or matters in question between or among them to mediation upon such terms as shall be mutually reasonably agreeable.
- 7.2 Notice and Filing of Requests. Any request by the Commissioning Authority for additional fees or expenses shall be made in writing to the Owner and filed prior to payment of the final 5% of the Basic Fee. Failure of the Commissioning Authority to timely make such a request shall constitute a waiver by the Commissioning Authority of any request for such fees and expenses.
- 7.3 Request Information. In every written request filed pursuant to Paragraph 7.2, the Commissioning Authority shall provide the nature and amount of the request; identification of persons, entities and events responsible for the request; activities on the Project Schedule affected by the request or new activities created by any delay and the relationship with existing activities; anticipated duration of any delay; and recommended action to avoid or minimize any future delay.
- 7.4 Meeting with Owner. If the Commissioning Authority files a written request with the Owner pursuant to Paragraph 7.2, the Owner shall, within thirty (30) days of receipt of the request, schedule a meeting in an effort to resolve the request and render a decision on the request promptly thereafter or render a decision on the request without a meeting, unless a mutual agreement is made to extend such time limit. The meeting scheduled by the Owner shall be attended by those expressly and fully authorized to resolve the request on behalf of the Commissioning Authority.
- 7.5 Appeal to University Architect. If the efforts of the Owner do not lead to resolution of the request, the Commissioning Authority may appeal to the University Architect by notice in writing. Within thirty (30) days of receipt of the notice, the University Architect shall schedule a meeting and render a decision on the appeal promptly thereafter or render a decision on the appeal without a meeting, unless a mutual agreement is made to extend such time limit. The purpose of such a meeting shall be to settle the matters in dispute and shall be attended by those expressly and fully authorized to resolve the matters on behalf of the Commissioning Authority. Chapter 119 of the Ohio Revised Code shall not be applicable to any proceedings of the University Architect. The decision of the University Architect shall be the final and conclusive determination of the Owner.
- 7.6 Delegation. No provision of this paragraph shall prevent the University Architect from delegating the duties or authorities of the University Architect to any other person selected at the discretion of the University Architect.
- 7.7 Performance. The Commissioning Authority shall proceed with the Commissioning Authority's performance of this Agreement during any dispute resolution process, unless otherwise agreed by the Commissioning Authority and the Owner in writing. The Owner shall continue to make payment in accordance with this Agreement of any amounts not in dispute pending final resolution of any dispute in accordance with this Paragraph.

ARTICLE VIII. TERMINATION AND REMEDIES

8.1 Termination of Agreement

- 8.1.1 Means of Termination. This Agreement may be terminated by either party upon seven (7) days' written notice should the other party fail to perform in accordance with the terms of this Agreement; provided, however, the Commissioning Authority shall not terminate this Agreement for non-payment if the Owner initiates the payment process by preparing, executing, and submitting a voucher for all reasonably undisputed amounts due to the Commissioning Authority within ten (10) days of receipt of the Commissioning Authority's written notice to terminate. This Agreement may be terminated by the Owner without cause upon fifteen (15) days' written notice to the Commissioning Authority. This Agreement may be terminated at any time upon the mutual consent of the Owner and the Commissioning Authority.
- 8.1.2 Commissioning Authority's Remedies Upon Termination by Owner Without Cause or Termination by Commissioning Authority. In the event of a termination that is not attributable to the failure of the Commissioning Authority to perform in accordance with the terms of this Agreement, the Commissioning Authority shall be compensated for all Basic Services of a completed Phase performed before the termination date in accordance with the percentages set forth in Subparagraph 5.4.1, together with Direct Personnel Expense for Additional Services and Reimbursable Expenses incurred before the termination date. In such event, for services rendered before the termination date in an uncompleted Phase and for Additional Services, the Commissioning Authority shall receive compensation based on the percentages of completion of that Phase or those Additional Services, as applicable, and as reasonably determined by the Owner, together with Direct Personnel Expense and Reimbursable Expenses incurred before the termination date.
- 8.1.3 Commissioning Authority's Remedies Upon Termination by Owner for Cause. In the event of a termination that is attributable to the failure of the Commissioning Authority to perform in accordance with the terms of this Agreement, the Commissioning Authority shall be compensated only for Basic Services performed and paid for before the termination date in accordance with the percentages set forth in Subparagraph 5.4.1, together with Additional Services completely performed before the termination date. In such event, the Commissioning Authority shall be reimbursed only for Direct Personnel Expense and Reimbursable Expenses incurred before the date of the Notice of Termination, unless the Owner consents in writing to the payment of Direct Personnel Expense and Reimbursable Expenses incurred after that date. Fee for termination will not be considered a reimbursed expense.
- 8.1.4 Commissioning Authority's Remedies Upon Termination by Mutual Consent. In the event of a termination upon the mutual consent of the Owner and the Commissioning Authority, any compensation for Basic Services or for Additional Services or payment of Direct Personnel Expense and Reimbursable Expenses shall be negotiated and set forth in an amendment to this Agreement in accordance with Subparagraph 9.5.2 before such termination.
- 8.1.5 Post-Termination Matters. If the Owner and the Commissioning Authority agree that any services are to be performed for the Project by the Commissioning Authority after any termination date, the amount of any compensation and the method and terms of payment of such compensation or any Direct Personnel Expense and Reimbursable Expenses related to such services shall be negotiated and set forth in an amendment to this Agreement in accordance with

Subparagraph 9.5.2 before commencement of such services. Such amendment and any relevant provisions of this Agreement shall survive termination of this Agreement.

8.2 Remedies

- 8.2.1 Cumulative Remedies. No remedy conferred upon the Owner by the terms of this Agreement is intended to be exclusive of any other remedy provided at law or in equity. Each and every remedy of the Owner shall be cumulative and shall be in addition to any other remedy given to the Owner hereunder or now or hereafter existing. Except as otherwise provided in this Agreement, no remedy conferred upon the Commissioning Authority by the terms of this Agreement is intended to be exclusive of any other remedy provided at law or in equity. Except as otherwise provided in this Agreement, each and every remedy of the Commissioning Authority shall be cumulative and shall be in addition to any other remedy given to the Commissioning Authority hereunder or now or hereafter existing.
- 8.2.2 Remedies Not Waived. No delay, omission, or forbearance to exercise any right, power, or remedy accruing to the Owner or the Commissioning Authority hereunder shall impair any such right, power, or remedy or shall be construed to be a waiver of any breach hereof or default hereunder. Every such right, power, or remedy may be exercised from time to time and as often as deemed expedient.

ARTICLE IX. MISCELLANEOUS PROVISIONS

9.1 Ownership and Use of Documents

- 9.1.1 Property of Owner. Drawings, specifications, and other documents prepared by or with the cooperation of the Commissioning Authority or any Consultant(s) pursuant to this Agreement are the property of the Owner, whether or not the Project for which they are prepared is commenced or completed. The Commissioning Authority or Consultant(s), as applicable, may retain copies, including reproducible copies of such drawings, specifications, and other documents for information and reference.
- 9.1.2 Commissioning Authority's Intellectual Property. All inventions, patents, design patents, and computer programs acquired or developed by the Commissioning Authority in connection with or relation to the Project shall remain the property of the Owner and shall be protected by the Owner from use by others except by agreement in writing with appropriate and agreed upon compensation to the Owner.
- 9.2 Public Relations. Any public relations or publicity about the Project shall be solely within the control and with the consent of the Owner.
- 9.3 Records. The records of all of the Commissioning Authority's Direct Personnel Costs, Reimbursable Expenses and payments to Consultants pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the Owner at all times and shall be maintained for seven (7) years after Final Acceptance of the Project by the Owner. All other records kept by the Commissioning Authority related to the Project shall be available to the Owner at all times and shall be maintained for six (6) years after Final Acceptance of the Project by the Owner.

9.4 Successors and Assigns. The Owner and the Commissioning Authority each bind themselves, their successors, assigns, and legal representatives to the other party to this Agreement and to the successors, assigns, and legal representatives of the other party with respect to all terms of this Agreement. The Commissioning Authority acknowledges that the Owner is an intended third-party beneficiary of this Agreement. The Commissioning Authority shall not assign or transfer any right, title, or interest in this Agreement without the prior written consent of the Owner.

9.5 Extent of Agreement

9.5.1 Entire Agreement. This Agreement and the Contract Documents represent the entire and integrated agreement between the Owner and the Commissioning Authority and supersede all prior negotiations, representations, or agreements, either written or oral.

9.5.2 Amendments. This Agreement may be amended only by an amendment prepared by the Owner and signed by the Commissioning Authority and the Owner.

9.5.3 Multiple Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

9.5.4 Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections hereof.

9.5.5 Precedence. If there are any inconsistencies between the provisions of the Announcement, the Commissioning Authority's Technical Proposal, or this Agreement, the provisions of the Agreement shall prevail.

9.5.6 Conditions to Validity. None of the rights, duties, and obligations contained in this Agreement shall be binding on any party until all legal requirements have been complied with, all necessary funds are available from the applicable state agencies or instrumentalities, and, when required, the expenditure of such funds is approved by the Controlling Board of the State of Ohio or other applicable approving body. In addition, if federal funds are to be used to pay fees and expenses under this Agreement, none of the rights, duties, and obligations contained in this Agreement shall be binding on any party until the Owner notifies the Commissioning Authority in writing that such funds are available from the Owner's source.

9.6 Governing Law

9.6.1 Law of Ohio. This Agreement shall be governed by the law of the State of Ohio to the exclusion of the law of any other jurisdiction, and the State of Ohio shall have jurisdiction over any action hereunder or related to the Project to the exclusion of any other forum.

9.6.2 Capitalized Terms. Capitalized terms in this Agreement shall have the same meaning as those in the Standard Conditions, unless otherwise defined herein or unless another meaning is indicated by the context.

9.7 Assignment of Antitrust Claims

Each party to this Agreement recognizes that, in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser of goods and

services; in this instance, the ultimate purchaser is the Owner. Therefore, the following assignment is made:

Intending to be legally bound, the Commissioning Authority, acting herein by and through the person signing this Agreement on its behalf as a duly authorized Authority, hereby assigns, sells, conveys, and transfers to the Owner any and all right, title, and interest in and to any and all claims and causes of action that the Commissioning Authority may now have or hereafter acquire under the antitrust laws of the United States of America or the State, PROVIDED that the claims or causes of action relate to the particular goods, products, commodities, intangibles, or services purchased, procured, or acquired by or rendered to the Owner pursuant to this Agreement, and EXCEPT as to any claims or causes of action that result from antitrust violations commencing after the price is established under this Agreement and that are not passed on to the Owner by any means. In addition, the Commissioning Authority warrants and represents that it will require any and all of its Consultants and suppliers to assign any and all federal and state antitrust claims and causes of action to the Owner, subject to the proviso and exception stated above. The provisions of this subparagraph shall become effective at the time the Owner executes its concurrence to this Agreement without further acknowledgment by any of the parties.

9.8 Notices

9.8.1 Addresses. All notices, certificates, requests, or other communications hereunder shall be in writing and shall be deemed to be given if delivered in person to the individual or to a member of the company or organization for whom the notice is intended, or if delivered at or mailed by registered or certified mail, postage prepaid, to the appropriate following address:

If to the Owner	If to the Commissioning Authority
The Ohio State University Facilities Operations and Development 400 Central Classroom Building 2009 Millikin Road Columbus, Ohio 43210	< Company > < Address > < City, State, Zip Code >
If to the Design Professional	If to the Construction Manager
< Company > < Address > < City, State, Zip Code >	< Company > < Address > < City, State, Zip Code >

9.8.2 Additional Notices. A copy of all notices, certificates, requests, or other communication shall be sent to the Owner.

9.8.3 Facsimiles. For convenience of communication only, notices, certificates, requests, or other communications hereunder of fewer than ten (10) pages, except requests for payment, may be sent by facsimile transmission to the Owner at (614) 292-2539 and to the Commissioning Authority at () . Notices, certificates, requests, or other communications sent by facsimile transmission shall not be deemed to be given unless a counterpart is received or mailed in accordance with Subparagraph 9.8.1. Requests for payment may be sent to the Owner by facsimile transmission only upon specific direction from the Owner.

- 9.8.4 Emergencies. In the event of an emergency involving the Project, including without limitation a fatality, serious injury, fire, collapse, flood, utility, or power loss to occupied facilities, explosion, or environmental damage, the Commissioning Authority shall immediately notify the Owner by telephone.
- 9.8.5 Change of Address. The Owner or the Commissioning Authority may, by notice given hereunder, designate any further or different addresses, telephone numbers, or facsimile numbers to which subsequent notices, certificates, requests, or communications shall be sent.
- 9.9 Severability. If any provision of this Agreement or any covenant, obligation, or agreement contained herein is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation, or agreement, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein. Such invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation, or agreement, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

Commissioning Authority

Company
Name

By

Print
Name

Title

Date

This agreement is hereby approved on [redacted].

Owner

By

Name Jeff Kaplan

Senior Vice President for Administration and Planning and
Title Special Assistant to the President

The Ohio State University

By

Name Christopher M. Culley

Title Vice President & General Counsel

Date
