

**UNIVERSITY SYSTEM OF NEW HAMPSHIRE
STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGN/BUILDER**

PART 1 AGREEMENT

BETWEEN the Owner:

Name: **University System of New Hampshire** (hereinafter referred to as Owner)

Address:

Telephone:

Facsimile:

and the Design/Builder:

Name: (hereinafter referred to as Design/Builder)

Address:

Telephone:

Facsimile:

For the following Project:

The design services described in Article 3 will be provided by the following person who is lawfully licensed to practice in the State of New Hampshire.

Name and address	Registration Number	Relationship to Design/Builder
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Normal structural, geotechnical, landscape/civil, mechanical and electrical engineering services will be provided by persons lawfully entitled to practice the discipline in the State of New Hampshire contractually through the Design/Builder as indicated below:

Name, address and discipline	Registration Number	Relationship to Design/Builder
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The Owner and the Design/Builder agree as set forth below.

TERMS AND CONDITIONS - PART 1 AGREEMENT**ARTICLE 1 - BASIS OF COMPENSATION**

The Owner shall compensate the Design/Builder in accordance with Article 6, Payments, and the other provisions of this Part 1 Agreement as described below.

1.1 COMPENSATION FOR PRELIMINARY DESIGN PHASE SERVICES PART 1-A

1.1.1 FOR PRELIMINARY DESIGN SERVICES, compensation shall be as follows:

1.1.2 AN INITIAL PAYMENT of 1.38% (\$_____) of the proposed contract sum developed per Part 1-A Preliminary Design Services shall be made upon Owner approval of the Part 1-A submission and credited to the Owner's account as compensation for that work.

1.2 COMPENSATION FOR DETAILED DESIGN PHASE SERVICES - PART 1-B

1.2.1 FOR DETAILED DESIGN SERVICES, compensation shall be as follows:

Following approval of the Part 1-A Preliminary Design Submission the Design/Builder may submit monthly invoices until submission of the Part 1-B Detailed Design submission. The total of all such invoices shall not exceed an additional 2.76% or \$_____ of the proposed contract sum stipulated in the Part 1-B submission, and shall be considered as compensation for the work to that point. The balance of design-related fees shall be deemed to be paid in equal installments as part of the Part 2 compensation payments.

1.3 REIMBURSABLE EXPENSES

1.3.1 No additional expenses will be reimbursed. Include anticipated expenses in proposed contract sum.

1.4 INTEREST PAYMENTS

1.4.1 The rate of interest of past due payments shall be the prime rate as published in the *Wall Street Journal* plus one percent (1%) APR.

1.5 IF THE SCOPE of the Project is changed materially, the amount of compensation shall be equitably adjusted.

1.6 The compensation set forth in this Part 1 Agreement shall be equitably adjusted if through no fault of the Design/Builder the services have not been completed within six (6) months of the date of this Part 1 Agreement.

ARTICLE 2 - GENERAL PROVISIONS

2.1 BASIC DEFINITIONS

2.1.1 The Contract Documents consist of this Part 1 Agreement to the extent not modified by the Part 2 Agreement, the Part 2 Agreement, the Part 1-B Detailed Design submission approved by the Owner and Modifications issued after execution of the Part 2 Agreement. A Modification is a Change Order or a written amendment to the Part 2 Agreement signed by both parties, or a Construction Change Directive issued by the Owner in accordance with Part 2 Section 8.3.

2.1.2 The term "Work" means the construction and services provided by the Design/Builder to fulfill the Design/Builder's obligations.

2.2 EXECUTION, CORRELATION AND INTENT

2.2.1 It is the intent of the Owner and Design/Builder that the Contract Documents include all items necessary for proper execution and completion of the Work. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Design/Builder shall be required only to the extent consistent with and reasonably inferable from the Contract Documents as being necessary to produce the intended results. Words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

- 2.2.2 Nothing contained in this Agreement shall create a contractual relationship between the Owner and any person or entity other than the Design/Builder.
- 2.2.3 The Design/Builder shall be obligated to prepare designs in full compliance with all applicable laws, shall notify the Owner in writing of any instruction believed to the contrary and shall not perform any act so believed.
- 2.3 OWNERSHIP AND USE OF DOCUMENTS
- 2.3.1 Drawings, specifications, and other documents and electronic data furnished by the Design/Builder are instruments of service. The Design/Builder's Architect and other providers of professional services shall retain all common law, statutory and other reserved rights, including copyright in those instruments of service furnished by them. Drawings, specifications, and other documents and electronic data are furnished for use solely with respect to this Agreement. The Owner shall be permitted to retain copies, including reproducible copies, of the drawings, specifications, and other documents and electronic data furnished by Design/Builder for information and reference in connection with the Project except as provided in Part 1 Section 2.3.2 and Part 1 Section 3.3.2.1.
- 2.3.2 If the Design/Builder defaults in the Design/Builder's obligations to the Owner, the Architect shall grant a license to the Owner to use the drawings, specifications, and other documents and electronic data furnished by the Architect to the Design/Builder's default in payment to the Architect for services previously performed and to indemnify the Architect with regard to claims arising from such reuse without the Architect's professional involvement.
- 2.3.3 Submission or distribution of the Design/Builder's 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 rights reserved in Section 2.3.1.

ARTICLE 3 - DESIGN/BUILDER

3.1 SERVICES

- 3.1.1 Preliminary Design Phase Services (Part 1-A) plus Detailed Design Phase Services (Part 1-B), both as approved by the Owner, comprise the services required to accomplish the preparation and submission of the Design/Builder's proposal as well as the preparation and submission of any modifications to the Proposal prior to execution of the Part 2 Agreement.
- 3.1.2 The Design/Builder entering into this agreement with the Owner shall hold full responsibility as both the designer of record for the project and for the performance of the construction of the project, either by being a single firm with both capabilities insitu, or a group of two or more firms mutually and legally bound together to act as the Design/Builder and provide sole-source responsibility and accountability for all aspects of the project.

3.2 RESPONSIBILITIES

- 3.2.1 Design services required by this Part 1 Agreement shall be performed by qualified architects, engineers and other design professionals licensed by the State of New Hampshire. Other than that the designer of record being a service performed by the Design/Builder, the contractual obligations of such professional persons are undertaken and performed in the interest of the Design/Builder.
- 3.2.2 The agreements between the Design/Builder and the persons or entities identified in this Part 1 Agreement, (other than the designer of record being a service performed by the Design/Builder) and any subsequent modifications, shall be in writing. These agreements, including financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon request.
- 3.2.3 Construction budgets shall be prepared by qualified professionals, cost estimators or contractors retained by and acting in the interest of the Design/Builder.
- 3.2.4 The Design/Builder shall be responsible to the Owner for acts and omissions of the Design/Builder's employees, subcontractors and their agents and employees, and other persons, including the Architect and other design professionals, performing any portion of the Design/Builder's obligations under this Part 1 Agreement.

- 3.2.5 The Design/Builder shall be obligated to prepare designs in full compliance with all applicable laws, shall notify the Owner in writing of any instructions believed to the contrary and shall not perform any act so believed.
- 3.2.6 Nothing contained in this Part 1 Agreement shall create a contractual relationship between the Owner and any person or entity other than the Design/Builder.
- 3.3 BASIC SERVICES
- 3.3.1 Preliminary Design Phase Services (Part 1-A)
- 3.3.1.1 The Design/Builder shall provide a preliminary evaluation of the Owner's program, schedule, construction standards, and project budget requirements, each in term of the other.
- 3.3.1.2 The Design/Builder shall visit the site, become generally familiar with the local conditions, and correlate observable conditions with the requirements of the Owner's program, schedule, standards, and budget.
- 3.3.1.3 The Design/Builder shall review laws applicable to the design and construction of the project; correlate such laws with the Owner's program requirements; and advise the Owner if any program requirement may cause a violation of such laws. Necessary changes to the Owner's program shall be accomplished by appropriate written modification or disclosed as described in Paragraph 3.3.1.5.
- 3.3.1.4 The Design/Builder shall review with the Owner alternative approaches to the design and construction of the project complying with the Owner's parameters and requirements for the project.
- 3.3.1.5 The Design/Builder shall submit to the Owner for his satisfaction and approval, a Preliminary Design Phase submission including preliminary design documents, a preliminary statement of the proposed contract sum, and a proposed schedule for the completion of the project. Preliminary design documents shall consist of preliminary design drawings and outline specifications sufficient to establish the size, quality and character of the sitework, architectural, structural, mechanical, and electrical aspects of the entire project and show or state in writing that all of the Owner's parameters and requirements have been met, except as specifically stated to the contrary. Deviations from the Owner's program shall be disclosed in the submission. If the submission is accepted by the Owner, the Design/Builder shall be paid the Initial Payment as stipulated in 1.1.2 for Preliminary Design Phase (Part 1-A) Services and shall proceed to Detailed Design Phase (Part 1-B) Services. A modification to the submission before execution of the Part 2 Agreement shall be recorded in writing as an addendum and shall be identified in the Contract Documents of the Part 2 Agreement.
- 3.3.2 Detailed Design Phase Services (Part 1-B)
- 3.3.2.1 The Design/Builder shall submit to the Owner for his satisfaction and approval, a Detailed Design Phase Submission including full Design Development documents as detailed in Attachment #1 "Requirements for a Design Development Submission" including a final statement of the proposed contract sum, and an updated proposed schedule for completion of the project. If the proposal is accepted by the Owner, the Design/Builder shall be paid any balance remaining due on the Design Development Payment stipulated in 1.2.1 for the Detailed Design Phase (Part 1-B) Services, and the parties shall then execute the Part 2 Agreement. A modification to the Proposal before execution of the Part 2 Agreement shall be recorded in writing as an addendum and shall be identified in the Contract Documents of the Part 2 Agreement. If the proposal is not accepted by the Owner, the Design/Builder shall be paid any balance remaining due on the Design Development Payment stipulated in 1.2.1 for the Detailed Design Phase (Part 1-B) Services, and pass to the Owner all deliverables developed in connection therewith. Owner shall own all deliverables from this project and shall possess the right to use at their discretion. Owner shall indemnify and hold harmless the Design/Builder from any claims, damages, allegations or harm resulting from or arising from the usage, modification or interpretation of the design information provided without the input and authorization from the Design/Builder.
- 3.4 ADDITIONAL SERVICES
- 3.4.1 In addition to the documentation described above, the amount stipulated for the detailed Design Phase (Part 1-B) Services shall also include the following services as necessary for the project: (check boxes as appropriate)

- Perform detailed investigations of the University's existing facilities and infrastructure, including measured drawings thereof if applicable, as necessary to complete the design and construction of the project.
- Provide analysis of owning and operating costs.
- Provide additional geotechnical services and information as necessary for the design of the project.
- Provide a stipulated additional contract sum amount to properly abate and dispose of any hazardous materials identified in a report prepared and paid for by the University's qualified consultant, as being present in the project's area of disturbance, as defined by the Design/Builder in the Preliminary Design Phase Submission.
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ARTICLE 4 - OWNER

4.1 RESPONSIBILITIES

- 4.1.1 The Owner shall provide full information in a timely manner regarding requirements for the Project, including a written program, which shall set forth the Owner's objectives, constraints and criteria. The Owner shall separately supply project schedule requirements.
- 4.1.2 The Owner shall establish and update an overall budget for the Project, including reasonable contingencies. This budget shall not constitute the contract sum.
- 4.1.3 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 Design/Builder in order to avoid unreasonable delay in the orderly and sequential progress of the Design/Builder's services. The Owner may obtain independent review of the documents by a separate architect, engineer, contractor, or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Design/Builder's services.
- 4.1.4 The Owner shall furnish surveys describing physical characteristics and utility locations for the site of the Project. The surveys shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.
- 4.1.5 Where new construction is contemplated, the Owner shall furnish the preliminary survey reports and analysis of geotechnical engineers. The Design/Builder shall obtain additional services as deemed reasonably necessary by the Design/Builder. Such services may include, but are not limited to, test borings, test pits, determinations of soil-bearing values, percolation tests, evaluation of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.
- 4.1.6 The Owner shall disclose, to the extent known to the Owner, the results and reports of prior tests, inspections or investigations conducted for the Project involving: structural or mechanical systems; chemical, air and water pollution; hazardous materials; or other environmental and subsurface conditions. The Owner has disclosed all information presently known to the Owner regarding the presence of pollutants or hazardous materials at the Project's site. The Owner shall provide and pay for, and provide to the Design/Builder a hazardous material survey to be conducted by a qualified professional to identify any such materials present within the proposed area of the project. The Design/Builder shall then include and separately identify the cost to properly abate and dispose of such materials in the proposed contract sum of the Part 1-A Preliminary Design Phase Submission and the Part 1-B Detailed Design Phase submission.

- 4.1.7 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including such auditing services as the Owner may require to verify the Design/Builder's Applications for Payment.
- 4.1.8 The Owner shall promptly obtain easements, zoning variances and legal authorizations regarding site utilization where essential to the execution of the Owner's program.
- 4.1.9 Those services, information, surveys, and reports required by Sections 4.1.4 through 4.1.8 which are within the Owner's control shall be furnished at the Owner's expense except where otherwise stipulated, and the Design/Builder shall be entitled to rely upon the accuracy and completeness thereof, except to the extent the Owner advises the Design/Builder to the contrary in writing.
- 4.1.10 The Owner shall communicate with persons or entities employed or retained by the Design/Builder through the Design/Builder, unless otherwise directed by the Design/Builder.

ARTICLE 5 - TIME

- 5.1 Upon the request of the Owner, the Design/Builder shall prepare a schedule for the performance of the Basic and Additional Services which shall not exceed the time limits contained in Section 10.1 and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.
- 5.2 If the Design/Builder is delayed in the performance of services under this Part 1 Agreement through no fault of the Design/Builder, any applicable schedule shall be equitably adjusted.

ARTICLE 6 - PAYMENTS

- 6.1 The initial payment provided in Article 1 shall be made upon the Owner's approval of the Part 1-A submission and credited to the Owner's account as provided in Section 1.1.2.
- 6.2 Subsequent payments for Basic Services and Additional Services, provided for in this Part 1 Agreement shall be made monthly on the basis set forth in Article 1.
- 6.3 Within thirty (30) days of the Owner's receipt of a properly submitted and correct Application for Payment, the Owner shall make payment to the Design/Builder.
- 6.4 Payments due the Design/Builder under this Part 1 Agreement which are not paid when due shall bear interest from the date due at the rate specified in Section 1.4, or in the absence of a specified rate, at the legal rate prevailing where the Project is located.

ARTICLE 7 - DISPUTE RESOLUTION - MEDIATION

- 7.1 Claims, disputes or other matters in question between the parties to this Part 1 Agreement arising out of or relating to this Part 1 Agreement or breach thereof shall be subject to and decided by mediation. Such mediation shall be conducted in accordance with the Construction Industry Mediation rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise.
- 7.2 The parties shall endeavor to settle disputes by mediation. Demand for mediation shall be filed in writing with the other party to this Part 1 Agreement. A demand for mediation 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 mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of repose or limitations.

ARTICLE 8 - MISCELLANEOUS PROVISIONS

- 8.1 Unless otherwise provided, this Part 1 Agreement shall be governed by the law of the place where the Project is located.
- 8.2 The Owner and the Design/Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Part 1 Agreement and to the partners, successors and assigns of such other party with respect to all covenants of this Part 1 Agreement. Neither the Owner nor the Design/Builder shall assign this Part 1 Agreement without the written consent of the other.
- 8.3 This Part 1 Agreement represents the entire and integrated agreement between the Owner and the Design/Builder and supersedes all prior negotiations, representations or agreements, either written or oral. This Part 1 Agreement may be amended only by written instrument signed by both the Owner and the Design/Builder.
- 8.4 Prior to the termination of the services of any design professional designated in this Part 1 Agreement, the Design/Builder shall identify to the Owner in writing another design professional with respect to whom the Owner has no reasonable objection, who will provide the services originally to have been provided by the design professional whose services are being terminated.

ARTICLE 9 - TERMINATION OF THE AGREEMENT

- 9.1 This Part 1 Agreement may be terminated by either party upon seven (7) days' written notice should the other party fail to perform substantially in accordance with its terms through no fault of the party initiating the termination.
- 9.2 This Part 1 Agreement may be terminated by the Owner without cause upon at least seven (7) days' written notice to the Design/Builder.
- 9.3 In the event of termination not the fault of the Design/Builder, the Design/Builder shall be compensated for services performed to the termination date.

ARTICLE 10 - OTHER CONDITIONS AND SERVICES

- 10.1 The Part 1-A Preliminary Design Phase Services to be performed shall be commenced within 10 days of the effective date of this agreement and subject to authorized adjustments and delays beyond the control of the Design/Builder shall be completed within ()calendar days.

The Part 1-B Detailed Design Phase Services to be performed shall be commenced upon the approval by the Owner of the Design/Builder's Part 1-A Preliminary Design submission and subject to authorized adjustments and delays beyond the control of the Design/Builder and shall be completed within () calendar days.
- 10.2 The Owner's preliminary program, budget and other documents, if any, are enumerated as follows:

Title	Date
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EXECUTION

This Agreement will become effective when all parties have signed it. The date of this Agreement will be the date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature.)

Each party is signing the Agreement on the date stated under the party's signature.

FOR THE UNIVERSITY SYSTEM OF NEW HAMPSHIRE

FOR THE DESIGN/BUILDER

By: _____
Paul D. Chamberlin
Associate Vice President for Facilities
University of New Hampshire

By: _____
Individual Name
Title
Company Name

Date: _____

Date: _____

By: _____
Christopher D. Clement
Vice President - Finance and Administration
University of New Hampshire

Date: _____

By: _____
Catherine A. Provencher
Vice Chancellor for Financial Affairs and Treasurer
University System of New Hampshire

Date: _____

Attachment 1

DESIGN DOCUMENTATION REQUIREMENTS

Revised August 2007 and October 2012

1. **Minimum Schematic Design Documentation Requirements** (Paragraphs 1.1 – 1.7 are applicable to the following purchasing/contracting/construction contracts: design/bid/build; construction management; and design/build part 1A submission)
 - 1.1 Preliminary graphic materials as required to describe the proposed design of the entire building in three dimensions. These materials will typically include architectural plans of all floor levels at a scale not smaller than 1/16" = 1'-0", showing arrangement, area and use of all rooms, internal horizontal and vertical circulation arrangement, provisions for compliance with ADA and life safety codes, location of mechanical, electrical, telecommunications, building maintenance and other service spaces; transformer location; air intake and exhaust locations; typical layouts of major spaces; provisions for future expansion; typical schematic layouts of principal mechanical, electrical and structural systems; exterior elevations of all sides; and longitudinal and transverse building sections.
 - 1.2 Preliminary graphic materials are required to describe in general the proposed development of the entire project site, including vehicular and pedestrian circulation; parking; fire equipment access; buildings including entrance points for general public, deliveries and persons with disabilities; existing and proposed site structures and significant natural features; wetlands, flood plains and floodways; new and existing overhead and underground utilities; existing and proposed grades; views; sun and wind orientation; vegetation, and relationship of all elements of the project to neighboring buildings or other significant features.
 - 1.3 Tabular comparison of all programmed and designed areas.
 - 1.4 Preliminary written cost and performance analysis of alternative structural, mechanical and electrical systems considered, including determination and evaluation of required structural, HVAC, and electrical loads, structural loading capacities of existing buildings, capacities of existing steam, water, waste water, electrical and other services available to the project, and reasons for selection of recommended systems.
 - 1.5 Written analysis of the probable impact on the project of code, environmental, scheduling, jobsite safety, security, access, labor, and materials availability, and other potential requirements or problems.
 - 1.6 Narrative description of and performance criteria for all principal construction materials and systems proposed for the project, including exterior and interior building materials and finishes; structural system; plumbing and piping systems and fixtures; HVAC systems including major equipment items and control systems; lighting concept and fixture types; electrical power and telecommunications systems; and other significant building or site components.
 - 1.7 Cost estimates based on quantities and criteria established by the Schematic Design documentation required by Paragraphs 1.1 through 1.6 (see Subparagraph 2.4.2.3 of the USNH Standard Form of Agreement for Professional Planning and/or Design Services).
2. **Design Development Submission Requirements** (Paragraphs 2.1 – 2.7 are applicable to a design development submission for either a design/bid/build or construction management contract or a design/build 1B submission)
 - 2.1 *Summary:* The Design Development submission may be described as an incomplete Contract Documents set. The submission should consist of a set of drawings that includes every page ultimately anticipated to be included in the final Contract Document drawings (even if those pages

contain little substantive information) and a specification manual(s) including draft language for every anticipated specification section.

- 2.2 The goal of the Design Development phase is to identify and make every design decision in every applicable discipline necessary to complete the project. It is desirable to communicate these decisions in graphic or written form as part of the submission, although it is recognized that due to the inherent nature of the submission this is not always possible. However, the design team working on the project should be able to refer to notes, calculations, or other materials that have been prepared or obtained previously to answer any question about the intended design.
- 2.3 The submission will be reviewed for compliance to program and previous schematic design submission(s), as well as adherence to previous decisions and directions given, and to the University standards for construction. In addition, the submission will be critiqued for conflicts, concerns, coordination issues, and opportunities for improvement.
- 2.4 *Content:* The minimum acceptable content will vary with the nature of the project and will require discussions between the designer and design manager to determine what will be required. Likewise, a judgment call needs to be made by the design manager as to whether the intent of the submission has been achieved by the design team. In general, though, a complete Design Development Submission will contain the following:
- 2.5 Minimum Design Development Documentation Requirements
- 2.5.1 Fully developed preliminary graphic materials including the elements described herein and in Paragraph 2.6, Drawings, below, describing the entire proposed building or buildings, typically including architectural plans of all levels and elevations of all exterior wall surfaces at a scale not smaller than 1/8" = 1'0", showing all interior partitions, doors, fenestration, stairs, ramps, elevators, utility rooms, closets, and plumbing fixtures; building sections at a scale not less than 1/4" = 1'0"; typical interior elevations; furniture and equipment layouts of all typical and unique spaces sufficient to illustrate their functional suitability; typical wall sections; typical window, door, interior partition and roof edge details; structural foundation plan, typical floor framing plan and framing sections showing main member sizes; plumbing and piping plans with header diagrams; HVAC plans with preliminary calculations, single line duct layout, equipment list and locations, and control diagram showing sequence of operation; fire protection plans with riser diagram and single line piping and head layout; lighting plans with fixture and switching layout and light level calculations; electrical power plans with panel schedule and locations, equipment sizes and layouts, riser diagram and load estimate; fire alarm drawings showing zones, device locations and riser diagram; and telecommunications plans with conduit and cable tray layouts, riser diagrams and locations of voice and data outlets. Room numbers in accordance with campus standards, column lines, scale and north arrow should be shown on plans for all disciplines.
- 2.5.2 Fully developed preliminary graphic materials describing the entire proposed development of the site, typically including separate dimensioned site circulation, utilities, grading, lighting and planting plans, and typical details or manufacturers' cuts of site lighting fixtures, signage, furnishings and structures.
- 2.5.3 Tabular comparison of all room areas as programmed, as shown in the Schematic Design submittal, and as shown in the Design Development submittal.
- 2.5.4 Study models and/or perspective sketches illustrating the proposed architectural design in detail.
- 2.5.5 Fully developed written analysis of the initial and life cycle costs, performance characteristics, and operating/maintenance requirements of proposed structural, mechanical, electrical, electronic and other technical systems, including their impact on existing steam, water, waste water, electrical and other services provided to the project.

- 2.5.6 Draft specifications and manufacturers' data sheets for all principal construction materials, equipment, fixtures and systems proposed for the project, including exterior and interior building materials and finishes, structural system, plumbing and piping systems, HVAC systems including control systems, lighting, electrical power and telecommunications systems, and other significant building or site components.
 - 2.5.7 Cost estimate based on quantities and criteria established by the Design Development documentation required by Subparagraphs 2.5.1 through 2.5.6 (see Subparagraph 2.4.3.2 of the USNH Standard Form of Agreement for Professional Planning and/or Design Services).
 - 2.5.8 Comprehensive synopsis of regulatory requirements for the project, identifying salient design criteria and requirements of all applicable codes, laws and regulations.
- 2.6 Drawings
- 2.6.1 The designer's normal title and index page naming the project and "Design Development Submission", and dated, including:
 - 2.6.1.1 Index of proposed final list of drawings
 - 2.6.1.2 Other elements customarily a part of designer's standard title and index page such as list of abbreviations, key plans, symbolization keys, general notes, etc.
 - 2.6.2 Scalable site drawings as will be necessary to describe the sitework of the project, including:
 - 2.6.2.1 Existing conditions
 - 2.6.2.2 Proposed conditions (drawing in progress sufficient to describe final intent)
 - 2.6.2.3 Utility work (drawings in progress sufficient to describe final intent)
 - 2.6.2.4 Hardscapes and landscapes (drawings in progress sufficient to describe final intent)
 - 2.6.2.5 Space allotted for relevant details (detail drawings not required but desirable to the extent known and possible to provide)
 - 2.6.2.6 Relevant schedules (schedule detail not required but desirable to the extent known and possible to provide)
 - 2.6.3 Scalable architectural drawings as necessary to describe the project, including:
 - 2.6.3.1 Demolition requirements (drawings in progress sufficient to describe final intent)
 - 2.6.3.2 Hazardous material abatement requirements (drawings sufficient to describe final intent)
 - 2.6.3.3 Floor plans
 - 2.6.3.4 Roof plans (drawings in progress sufficient to describe final intent)
 - 2.6.3.5 Reflected ceiling plans (drawings in progress sufficient to describe final intent)
 - 2.6.3.6 Exterior Elevations
 - 2.6.3.7 Wall Sections
 - 2.6.3.8 Door, finish, and other planned schedules (schedule detail not required but desirable to the extent known and possible to provide)
 - 2.6.3.9 Space allotted for relevant details, interior elevations, etc. (detail drawings not required but desirable to the extent known and possible to provide)
 - 2.6.4 Scalable structural drawings as necessary to describe the project, including:
 - 2.6.4.1 Key to structural abbreviations and symbols, and general notes (if not provided on title and index pages)
 - 2.6.4.2 Foundation plans (drawings in progress sufficient to describe final intent)
 - 2.6.4.3 Framing plans for all floors and roofs (drawings in progress sufficient to describe final intent)
 - 2.6.4.4 Space allotted for relevant details, etc. (detail drawings not required but desirable to extent known and possible to provide)
 - 2.6.5 Mechanical drawings as necessary to describe the project, including:

- 2.6.5.1 Key to mechanical abbreviations and symbols, and general notes (if not provided on main title and index pages)
- 2.6.5.2 HVAC demolition plans (drawing in progress sufficient to describe final intent)
- 2.6.5.3 HVAC plans (drawings in progress sufficient to describe final intent)
- 2.6.5.4 HVAC schedules (schedule detail not required but desirable to the extent known and possible to provide)
- 2.6.5.5 HVAC details and diagrams (detail drawings not required but desirable to the extent known and possible to provide)
- 2.6.5.6 Plumbing demolition plans (drawings in progress sufficient to describe final intent)
- 2.6.5.7 Plumbing plans (drawings in progress sufficient to describe final intent)
- 2.6.5.8 Plumbing schedules, details, and diagrams (detail drawings and schedule details not required but desirable to the extent known and possible to provide)
- 2.6.5.9 Fire protection drawings, details, and/or schedules (drawing in progress sufficient to describe final intent)
- 2.6.6 Electrical drawings as necessary to describe the project, including:
 - 2.6.6.1 Key to electrical abbreviations and symbols, and general notes (if not provided on main title and index pages)
 - 2.6.6.2 Electrical demolition plans (drawings in progress sufficient to describe the final intent)
 - 2.6.6.3 Electrical power distribution plans (drawings in progress sufficient to describe the final intent)
 - 2.6.6.4 Lighting plans (drawings in progress sufficient to describe final intent)
 - 2.6.6.5 Lighting schedules (schedule detail not required but desirable to the extent known and possible to provide)
 - 2.6.6.6 Communications systems plans (Telephone/data, drawings in progress sufficient to describe the final intent)
 - 2.6.6.7 Special purpose systems plans (Fire alarm, A-V, security, BAS, CATV, CCTV, PA, central clock, etc., drawings in progress sufficient to describe final intent)
 - 2.6.6.8 Communications and special systems details and/or schedules (detail drawings and schedule details not required but desirable to the extent known and possible to provide)
- 2.6.7 Other
 - 2.6.7.1 If it is customary or anticipated for the designer to utilize a separate small detail set, such an in-progress set should also be issued with the Design Development Submission.

2.7 Specifications

- 2.7.1 A first edit draft of a full set of bound or loose leaf detailed specifications (Divisions 1 thru 16), with all applicable specification division sections including:
 - 2.7.1.1 Dated cover page indicating project name and "Design Development Submission"
 - 2.7.1.2 Table of contents

3. **Minimum Construction Documents Documentation Requirements** (Paragraphs 3.1 – 3.3 apply to either a design/bid/build or construction management contract but do not apply to a USNH Standard Form of Agreement between Owner and Design/Builder contract)

- 3.1 Complete final working drawings and specifications, prepared and checked in accordance with the Quality Control Program required by Paragraph 4.5.1 of the USNH Standard Form of Agreement for

Professional Planning and/or Design Services, fully describing all parts of the Work. These will typically include, in addition to the documentation required by Section 2, Design Development Submission Requirements, site piping diagrams, pipe sizes, connection details and design calculations; construction area limits; protection and guying details for existing and proposed trees; building construction and site development phasing; building envelope flashing; exterior, roof and roof mounted equipment details; structural framing and foundation details, beam and column schedules, notes and calculations; fully dimensioned plans of each building level; demolition plans; interior finish, door and hardware schedules; interior elevations; reflected ceiling plans; interior finish and partition details; elevator and hoistway details; pipe sizes, riser diagrams, header diagrams, and calculations for all plumbing, fire protection and radiation systems; coil, convector, valve, plumbing fixture and water heater details and specifications; HVAC duct layouts including complete plans, plus cross sections where required to show installation requirements clearly, dimensioned and drawn to scale; control system diagrams; HVAC equipment, hood, damper, louver, grille and register details; HVAC design calculations; lighting fixture schedule, control diagrams, installation details and design calculations; electric panel schedules, load summary, connections to other systems and design calculations; fire alarm riser diagram and connection details to HVAC and other systems; telecommunications systems backboard layouts, connection diagram and details, voice and data outlet and cable tray locations and details, and cabling schedule; and details for all special facilities such as loading docks, handicapped access provisions, materials handling or safety devices, etc.

- 3.2 Detailed analysis of the projected quantities of electrical power, gas, heating oil, steam, hot water, and any other applicable energy or utilities consumption, expressed in energy units per square foot per year, and estimated annual cost for each such utility.
- 3.3 Cost estimate based on 90% completion of the documentation required by Paragraph 3.1 (see Subparagraph 2.4.4.3 of the USNH Standard Form of Agreement for Professional Planning and/or Design Services). Submit two complete sets to the Owner for review purposes at 90% completion.

**UNIVERSITY SYSTEM OF NEW HAMPSHIRE
STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGN/BUILDER**

PART 2 AGREEMENT

BETWEEN the Owner:

Name: **University System of New Hampshire** (hereinafter referred to as Owner)

Address:

Telephone:

Facsimile:

and the Design/Builder:

Name: (hereinafter referred to as Design/Builder)

Address:

Telephone:

Facsimile:

For the following Project:

The architectural services described as being provided by the designer of record in Article 4 will be provided by the following person who is lawfully licensed to practice architecture in the State of New Hampshire:

Name and address	Registration Number	Relationship to Design/Builder
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Normal structural, geotechnical, landscape/civil, mechanical and electrical engineering services will be provided by persons lawfully entitled to practice the discipline in the State of New Hampshire contractually through the Design/Builder as indicated below:

Name, address and discipline	Registration Number	Relationship to Design/Builder
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The Owner and the Design/Builder agree as set forth below.

ARTICLE 1 - BASIS OF COMPENSATION

The Owner shall compensate the Design/Builder in accordance with Article 6, Payments, and the other provisions of this Part 2 Agreement as described below.

1.1. COMPENSATION

1.1.1 For the Design/Builder's performance of the Work, as described in Section 4.2 and including any other services listed in Article 14 as part of Basic Services, the Owner shall pay the Design/Builder in current funds the Contract Sum as stipulated in the approved Part 1B submission (See Attachment __) of (\$) and as subsequently modified in accordance herewith.

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1.1.2 For Additional Services, as described in Section 4.3 and including any other services listed in Article 14 as Additional Services, compensation shall be as follows:

Additional services described in 4.3 shall be included in the Contract Sum set forth in the Part 1-B submission.

1.2 REIMBURSABLE EXPENSES

1.2.1 All reimbursable expenses are deemed to be included in the contract sum set forth in the Part 1-B submission.

1.3 INTEREST PAYMENT

1.3.1. The rate of interest of past due payments shall be the prime rate as published in the *Wall Street Journal* plus one percent (1%) APR

ARTICLE 2 - GENERAL PROVISIONS

2.1 BASIC DEFINITIONS

2.1.1 The Contract Documents consist of the Part 1 Agreement to the extent not modified by this Part 2 Agreement, this Part 2 Agreement, the Design/Builder's Proposal and written addenda to the Proposal identified in Article 14, the Construction Documents approved by the Owner in accordance with Section 3.2.3 and Modifications issued after execution of this Part 2 Agreement. A Modification is a Change Order or a written amendment to this Part 2 Agreement signed by both parties, or a Construction Change Directive issued by the Owner in accordance with Section 9.3.

2.1.2 The term "Work" means the construction and services provided by the Design/Builder to fulfill the Design/Builder's obligations.

2.2 EXECUTION, CORRELATION AND INTENT

2.2.1 It is the intent of the Owner and Design/Builder that the Contract Documents include all items necessary for proper execution and completion of the Work. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Design/Builder shall be required only to the extent consistent with and reasonably inferable from the Contract Documents as being necessary to produce the intended results. Words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

2.2.2 Nothing contained in this Part 2 Agreement shall create a contractual relationship between the Owner and any person or entity other than the Design/Builder.

2.2.3 The Design/Builder shall be obligated to prepare designs in full compliance with all applicable laws, shall notify the Owner in writing of any instruction believed to the contrary and shall not perform any act so believed.

2.3 OWNERSHIP AND USE OF DOCUMENTS

- 2.3.1 Drawings, specifications, and other documents and electronic data furnished by the Design/Builder are instruments of service. The Design/Builder's Architect and other providers of professional services shall retain all common law, statutory and other reserved rights, including copyright in those instruments of service furnished by them. Drawings, specifications, and other documents and electronic data are furnished for use solely with respect to this Part 2 Agreement. The Owner shall be permitted to retain copies, including reproducible copies, of the drawings, specifications, and other documents and electronic data furnished by Design/Builder for information and reference in connection with the Project except as provided in Section 2.3.2.
- 2.3.2 If the Design/Builder defaults in the Design/Builder's obligations to the Owner, the Architect shall grant a license to the Owner to use the drawings, specifications, and other documents and electronic data furnished by the Architect to the Design/Builder's default in payment to the Architect for services previously performed and to indemnify the Architect with regard to claims arising from such reuse without the Architect's professional involvement.
- 2.3.3 Submission or distribution of the Design/Builder's 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 rights reserved in Section 2.3.1.

ARTICLE 3 - OWNER

- 3.1 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 examine documents submitted by the Design/Builder and shall render decisions in a timely manner and in accordance with the schedule accepted by the Owner. The Owner may obtain independent review of the Contract Documents by a separate architect, engineer, contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work.
- 3.1.1 The Owner's designated representative is
- 3.2 The Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and Design/Builder agree in writing.
- 3.2.1 The Owner's designated on-site project representative is
- 3.3 The Owner shall cooperate with the Design/Builder in securing building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is excluded from the Design/Builder's Proposal.
- 3.4 The Owner shall disclose, to the extent known to the Owner, the results and reports of prior tests, inspections or investigations conducted for the Project involving: structural or mechanical systems; chemical, air and water pollution; hazardous materials; or other environmental and subsurface conditions. The Owner shall disclose all information known to the Owner regarding the presence of pollutants at the Project's site.
- 3.5 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including such auditing services as the Owner may require to verify the Design/Builder's Application for Payment.
- 3.6 Those services, information, surveys and reports required by Sections 3.4 and 3.5 which are within the Owner's control shall be furnished at the Owner's expense except where stated otherwise, and the Design/Builder shall be entitled to rely upon the accuracy and completeness thereof, except to the extent the Owner advises the Design/Builder to the contrary in writing.

- 3.7 If the Owner requires the Design/Builder to maintain any special insurance coverage, policy, amendment, or rider, the Owner shall pay the additional cost thereof, except as otherwise stipulated in this Part 2 Agreement.
- 3.8 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or nonconformity with the Design/Builder's Proposal or the Construction Documents, the Owner shall give prompt written notice thereof to the Design/Builder.
- 3.9 The Owner shall, at the request of the Design/Builder, prior to execution of this Part 2 Agreement and promptly upon request thereafter, furnish to the Design/Builder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the contract.
- 3.10 The Owner shall communicate with persons or entities employed or retained by the Design/Builder through the Design/Builder, unless otherwise directed by the Design/Builder.

ARTICLE 4 - DESIGN/BUILDER

4.1 SERVICES AND RESPONSIBILITIES

- 4.1.1 Design services required by this Part 2 Agreement shall be performed by qualified architects and other design professionals. The contractual obligations of such professional persons or entities are undertaken and performed in the interest of the Design/Builder.
- 4.1.2 The agreements between the Design/Builder and the persons or entities identified in this Part 2 Agreement, and any subsequent modifications shall be in writing. These agreements, including financial agreements with respect to this Project, shall be promptly and fully disclosed to the Owner upon request.
- 4.1.3 The Design/Builder shall be responsible to the Owner for acts and omissions of the Design/Builder's employees, subcontractors and their agents and employees, and other persons, including the Architect and other design professionals, performing any portion of the Design/Builder's obligations under this Part 2 Agreement.

4.2 BASIC SERVICES

- 4.2.1 The Design/Builder's Basic Services are described below and in Article 14.
- 4.2.2 The Design/Builder shall designate a representative authorized to act on the Design/Builder's behalf with respect to the Project.
- .1 The Design/Builder's designated representative is
- 4.2.3 The Design/Builder, with the assistance of the Owner, shall file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.
- 4.2.4 Unless otherwise provided in the Contract Documents, the Design/Builder shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- 4.2.5 The Design/Builder shall furnish services of land surveyors, geotechnical engineers and other consultants for subsoil, air and water conditions, in addition to those provided under the Part 1 Agreement, when such services are deemed necessary by the Design/Builder to properly carry out the design services required by this Part 2 Agreement.
- 4.2.6 The Design/Builder shall be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under this Part 2 Agreement.
- .1 Design/Builder shall be responsible for the coordination of any disruption in services, such as, but not limited to, electrical, heating or cooling services

- 4.2.7 The Design/Builder shall keep the Owner informed of the progress and quality of the Work.
- .1 Design/Builder shall be responsible for scheduling, conducting and recording weekly project meetings.
- 4.2.8 The Design/Builder shall be responsible for correcting Work, which does not conform to the Part 1-B submission.
- 4.2.9 The Design/Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the construction will be free from faults and defects, and that the construction will conform with the requirements of the Part 1-B submission. Construction not conforming to these requirements, including substitutions not properly approved by the Owner, shall be corrected in accordance with Article 10.
- 4.2.10 The Design/Builder shall pay all sales, consumer, use and similar taxes which had been legally enacted at the time the Design/Builder's Proposal was first submitted to the Owner, and shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are either customarily secured after execution of a contract for construction or are legally required at the time the Design/Builder's proposal was first submitted to the Owner.
- .1 The Owner is a 501(c)3 organization and therefore is exempt from most taxes including sales and use taxes.
 - .2 As of the date of this contract, the state of New Hampshire has no sales or use taxes.
- 4.2.11 The Design/Builder shall comply with and give notice required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.
- .1 NH RSAs 21-I:81-a and 21-I:81-b: The Design/Builder shall comply with State of New Hampshire RSAs 21-I:81-a (<http://www.gencourt.state.nh.us/rsa/html/I/21-I/21-I-81-a.htm>) and 21-I:81-b (<http://www.gencourt.state.nh.us/rsa/html/I/21-I/21-I-81-b.htm>). A blank reporting form ("Subcontractor/Employee Master List" in MS Word format which may be expanded as necessary) may be accessed at <http://www.unh.edu/purchasing/forms.html> in the Construction Forms section.
 - .2 NH RSA277:5-a: The Design/Builder shall comply with State of New Hampshire RSA 277:5-a, Occupational Safety and Health Administration Certification. All on-site employees shall have completed an OSHA 10-hour construction safety program prior to beginning work. (See: <http://www.gencourt.state.nh.us/rsa/html/XXIII/277/277-5-a.htm>.)
- 4.2.12 The Design/Builder shall pay royalties and license fees for patented designs or products. The Design/Builder shall defend suits or claims for infringement of patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer is required by the Owner. However, if the Design/Builder has reason to believe the use of a required design, process or product is an infringement of a patent, the Design/Builder shall be responsible for such loss unless such information is promptly furnished to the Owner.
- 4.2.13 The Design/Builder shall keep the premises and surrounding areas free from accumulation of waste materials or rubbish caused by operations under this Part 2 Agreement. At the completion of the Work, the Design/Builder shall remove from the site waste materials, rubbish, the Design/Builder's tools, construction equipment, machinery, and surplus materials.
- 4.2.14 The Design/Builder shall notify the Owner when the Design/Builder believes that the Work or an agreed-upon portion thereof is substantially completed. If the Owner concurs, the Design/Builder shall issue a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibility of each party for security, maintenance, heat, utilities, damage to the Work and insurance, shall include a list of items to be completed or corrected and shall fix the time within the Design/Builder

shall complete items listed therein. Disputes between the Owner and Design/Builder regarding the Certificate of Substantial Completion shall be resolved in accordance with provisions of Article 11.

- 4.2.15 The Design/Builder shall maintain at the site for the Owner one record copy of the drawings, specifications, product data, samples, shop drawings, Change Orders and other modifications, in good order and regularly updated to record the completed construction. These shall be delivered to the Owner upon completion of construction and prior to final payment.
- 4.3 ADDITIONAL SERVICES - In addition to the services described above, the Design/Builder shall provide the following additional services inclusive in its contract sum:
- 4.3.1 Providing coordination of construction, equipment installation, or other required work provided by the University's own forces or separate contractors employed by the University.
- 4.3.2 Complete commissioning of the building's systems and Design/Builder installed equipment.
- 4.3.3 Preparation of as-built record drawings for the University's archive.
- .1 Drawings shall be done and stamped by an engineer or architect licensed in the state of New Hampshire
 - .2 Drawings shall be digital and in AutoCAD format (Release 12); for complete information on the requirements see Section 01770, Closeout Procedures – Project Record Documents, of the UNH Planning, Design and Construction guidelines at http://www.unh.edu/ecd/design_standards/pdfs/Chapter%205%20Division%201/01770.pdf.
 - .3 A complete submittal log of all approved products used on the project shall be submitted. See Section 01100, General Requirements, ¶1.6, §E of the UNH Planning, Design and Construction guidelines at http://www.unh.edu/ecd/design_standards/pdfs/Chapter%205%20Divisions%201-17.pdf for complete details.
- 4.3.4 Preparation of complete Owner's operation and maintenance manual, and the appropriate training of the University's personnel to adequately operate and maintain the completed facility.
- .1 Complete requirements for the preparation of operation and maintenance manuals may be found in the UNH Planning, Design and Construction Guidelines, Section 01770, Closeout Procedures – Project Record Documents. See http://www.unh.edu/ecd/design_standards/pdfs/Chapter%205%20Division%201/01770.pdf
 - .2 The term “facility”, as used here, includes only that equipment supplied by Design-Builder under this Part 2 Agreement.

ARTICLE 5 - TIME

- 5.1 Unless otherwise indicated, the Owner and the Design/Builder shall perform their respective obligations as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Project.
- 5.2 Time limits stated in the Contract Documents are of the essence. The Work to be performed under this Part 2 Agreement shall commence upon receipt of a notice to proceed unless otherwise agreed and, subject to authorized Modifications, Substantial Completion shall be achieved on or before the date established in Article 14.
- 5.3 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.
- 5.4 Based on the Design/Builder's Proposal, a construction schedule shall be provided consistent with Section 5.2 above.
- 5.5 If the Design/Builder is delayed at any time in the progress of the Work by an act or neglect of the Owner, Owner's employees, or separate contractors employed by the Owner or by changes ordered in the Work, or

by labor disputes, fire, unusual delay in deliveries, adverse weather conditions not reasonably anticipatable, unavoidable casualties or other causes beyond the Design/Builder's control, or by delay authorized by the Owner pending mediation, or by other causes which the Owner and Design/Builder agree may justify delay, then the Contract Time shall be reasonably extended by Change Order.

ARTICLE 6 - PAYMENTS

6.1 PROGRESS PAYMENTS

- 6.1.1 The Design/Builder shall deliver to the Owner itemized Applications for Payment in such detail as indicated in Article 14.
- 6.1.2 Within thirty (30) days of the Owner's receipt of a properly submitted and correct Application for Payment, the Owner shall make payment to the Design/Builder.
- 6.1.3 The Application for Payment shall constitute a representation by the Design/Builder to the Owner that the design and construction have progressed to the point indicated, the quality of the Work covered by the application is in accordance with the Part 1 submissions, and the Design/Builder is entitled to payment in the amount requested.
- 6.1.4 Upon receipt of payment from the Owner, the Design/Builder shall promptly pay the Architect, other design professionals and each contractor the amount to which each is entitled in accordance with the terms of their respective contracts.
- 6.1.5 The Owner shall have no obligation under this Part 2 Agreement to pay or to be responsible in any way for payment to a design professional or a contractor performing portions of the Work.
- 6.1.6 Neither progress payment nor partial or entire use or occupancy of the Project by the Owner shall constitute an acceptance of Work not in accordance with the Part 1-B submission.
- 6.1.7 The Design/Builder warrants that title to all construction covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design/Builder further warrants that upon submittal of an Application for Payment all construction for which payments have been received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Design/Builder or any other person or entity performing construction at the site or furnishing materials or equipment relating to the construction.
- 6.1.8 At the time of Substantial Completion, the Owner shall pay the Design/Builder the retainage, if any, less the reasonable cost to correct or complete incorrect or incomplete Work. Final payment of such withheld sum shall be made upon correction or completion of such Work.

6.2 FINAL PAYMENTS

- 6.2.1 Neither final payment nor amounts retained, if any, shall become due until the Design/Builder submits to the Owner: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or Owner's property might be responsible or encumbered (less amounts withheld by the Owner) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner; (3) a written statement that the Design/Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; (4) consent of surety, if any, to final payment; and (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the contract, to the extent and in such form as may be designated by the Owner. If a contractor or other person or entity entitled to assert a lien against the Owner's property refuses to furnish a release or waiver required by the Owner, the Design/Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Design/Builder shall indemnify the Owner for all loss and cost, including reasonable attorneys' fees incurred as a result of such lien.

- 6.2.2 When the Work has been completed and the contract fully performed, the Design/Builder shall submit a final application for payment to the Owner, who shall make final payment within 30 days of receipt.
- 6.2.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from:
- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
 - .2 failure of the Work to comply with the requirements of the Part 1-B submission; or
 - .3 terms of special warranties required by the Part 1-B submission.
- 6.2.4 Acceptance of final payment shall constitute a waiver of all claims by the Design/Builder except those previously made in writing and identified by the Design/Builder as unsettled at the time of final Application for Payment.
- 6.3 INTEREST PAYMENTS
- 6.3.1 Payments due the Design/Builder under this Part 2 Agreement which are not paid when due shall bear interest from the date due at the rate specified in Section 1.3, or in the absence of a specified rate, at the legal rate prevailing where the Project is located.

ARTICLE 7 - PROTECTION OF PERSONS AND PROPERTY

- 7.1 The Design/Builder shall be responsible for initiating, maintaining and providing supervision of all safety precautions and programs in connection with the performance of this Part 2 Agreement including those enumerated in Article 10, Protection of Persons and Property of the University System of New Hampshire's General Conditions of the Contract for Design-Build Version 1.3.
- 7.2 The Design/Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (1) employees on the Work and other persons who may be affected thereby; (2) the Work and materials and equipment to be incorporated therein, whether in storage or on or off the site, under care, custody, or control of the Design/Builder or the Design/Builder's contractors; and (3) other property at or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- 7.3 The Design/Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury or loss.
- 7.4 The Design/Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance provided or required by the Contract Documents) to property at the site caused in whole or in part by the Design/Builder, a contractor of the Design/Builder or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

ARTICLE 8 - INSURANCE AND BONDS

- 8.1 Section 11 of the University System of New Hampshire's General Conditions of the Contract for Design-Build Version 1.3 shall establish the insurance and bonding requirements for this Design/Build Part 2 Agreement.

ARTICLE 9 - CHANGES IN THE WORK

- 9.1 CHANGES
- 9.1.1 Changes in the Work may be accomplished after execution of this Part 2 Agreement, without invalidating this Part 2 Agreement, by Change Order, Construction Change Directive, or order for a minor change in the Work, subject to the limitations stated in the Contract Documents.

- 9.1.2 A Change Order shall be based upon agreement between the Owner and the Design/Builder; a Construction Change Directive may be issued by the Owner without the agreement of the Design/Builder; an order for a minor change in the Work may be issued by the Design/Builder alone.
- 9.1.3 Changes in the Work shall be performed under applicable provisions of the Part 1 requirements, and the Design/Builder shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.
- 9.1.4 If unit prices are stated in the Part 1 submissions or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or to the Design/Builder, the applicable unit prices shall be equitably adjusted.
- 9.2 CHANGE ORDERS
- 9.2.1 A Change Order is a written instrument prepared by the Design/Builder and signed by the Owner and the Design/Builder, stating their agreement upon all of the following:
- .1 a change in the Work;
 - .2 the amount of the adjustment, if any, in the Contract Sum; and
 - .3 the extent of adjustment, if any, in the Contract Time.
- 9.2.2 If the Owner requests a proposal for a change in the Work from the Design/Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Design/Builder for any costs incurred for estimating services, design services or preparation of proposed revisions to the Part 1 documents.
- 9.3 CONSTRUCTION CHANGE DIRECTIVES
- 9.3.1 A Construction Change Directive is a written order prepared and signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both.
- 9.3.2 Except as otherwise agreed by the Owner and the Design/Builder, the adjustment to the Contract Sum shall be determined on the basis of reasonable expenditures for design services and revisions to the Contract Documents. In case of an increase in the Contract Sum, the cost shall include a reasonable allowance for overhead and profit. In such case, the Design/Builder shall keep and present an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, costs for these purposes shall be limited to the following:
- .1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
 - .2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
 - .3 rental costs of machinery and equipment exclusive of hand tools, whether rented from the Design/Builder or others;
 - .4 costs of premiums for all bonds and insurance permit fees, and sales, use or similar taxes;
 - .5 additional costs of supervision and field office personnel directly attributable to the change; and fees paid to other professionals.
- 9.3.3 Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Design/Builder to the Owner for deletion or change which results in a net decrease in the Contract Sum will be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.
- 9.3.4 When the Owner and the Design/Builder agree upon the adjustments in the Contract Sum and Contract Time, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

9.4 MINOR CHANGES IN THE WORK

9.4.1 The Design/Builder shall have authority to make minor changes in the Construction Documents and construction consistent with the intent of the Part 1 submissions when such minor changes do not involve adjustment in the Contract Sum or extension of the Contract Time. The Design/Builder shall promptly inform the Owner, in writing, of minor changes in the Construction Documents and construction.

9.5 CONCEALED CONDITIONS

9.5.1 If conditions are encountered at the site which are subsurface or otherwise concealed physical conditions, which differ materially from those indicated or previously assumed to exist, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Contract Sum shall be equitably adjusted, for the impact resulting from such concealed or unknown conditions, by Change Order upon claim by either party made within 21 days after the claimant becomes aware of the conditions.

9.6 REGULATORY CHANGES

9.6.1 The Design/Builder shall be compensated for changes in the construction necessitated by the enactment or revision of codes, laws or regulations subsequent to the submission of the Design/Builder's Proposal.

ARTICLE 10 - CORRECTION OF WORK

10.1 The Design/Builder shall promptly correct Work rejected by the Owner or known by the Design/Builder to be defective or failing to conform to the requirements of the contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Design/Builder shall bear costs of correcting such rejected Work, including additional testing and inspections.

10.2 If, within one (1) year after the date of Substantial Completion of the Work or, after the date for commencement of warranties established in a written agreement between the Owner and the Design/Builder, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Design/Builder shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Design/Builder a written acceptance of such condition.

10.3 Nothing contained in this Article 10 shall be construed to establish a period of limitation with respect to other obligations, which the Design/Builder might have under the Contract Documents. Establishment of the time period of one (1) year as described in Section 9.2 relates only to the specific obligation of the Design/Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Part 1 requirements may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to the Design/Builder's obligations other than specifically to correct the Work.

10.4 If the Design/Builder fails to correct nonconforming Work as required or fails to carry out Work in accordance with the Part 1 requirements, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Design/Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the Owner's right to stop the Work shall not give rise to a duty on the part of the Owner to exercise the right for benefit of the Design/Builder or other persons or entities.

10.5 If the Design/Builder defaults or neglects to carry out the Work in accordance with the Part 1 requirements and fails within seven (7) days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may give a second written notice to the Design/Builder and, seven (7) days following receipt by the Design/Builder of that second written notice and without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design/Builder, the costs of correcting such deficiencies. If the payments then or thereafter due the Design/Builder are not sufficient to cover the amount of the deduction, the Design/Builder shall pay the difference to the Owner. Such action by the Owner shall be subject to dispute resolution procedures as provided in Article 10.

ARTICLE 11 - DISPUTE RESOLUTION – MEDIATION

- 11.1 Claims, disputes or other matters in question between the parties to this Part 2 Agreement arising out of or relating to this Part 2 Agreement or breach thereof shall be subject to and decided by mediation. Such mediation shall be conducted in accordance with the Construction Industry Mediation rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise.
- 11.2 The parties shall endeavor to settle disputes by mediation. Demand for mediation shall be filed in writing with the other party to this Part 2 Agreement. A demand for mediation 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 mediation 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 repose or limitations.

ARTICLE 12 - MISCELLANEOUS PROVISIONS

- 12.1 Unless otherwise provided, this Part 2 Agreement shall be governed by the law of the place where the Project is located.
- 12.2 **SUBCONTRACTS**
- 12.2.1 The Design/Builder, as soon as practicable after execution of this Part 2 Agreement, shall furnish to the Owner in writing the names of the persons or entities the Design/Builder will engage as contractors for the Project, excepting major sub contractors previously identified in Part 1-A.
- 12.3 **WORK BY OWNER OR OWNER'S CONTRACTORS**
- 12.3.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of insurance and waiver of subrogation identical to the provisions of this Part 2 Agreement. If the Design/Builder claims that delay or additional cost is involved because of such action by the Owner, the Design/Builder shall assert such claims as provided in Section 12.4.
- 12.3.2 The Design/Builder shall afford the Owner's separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Design/Builder's construction and operations with theirs as required by the Contract Documents.
- 12.3.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefore.
- 12.4 **CLAIMS FOR DAMAGES**
- 12.4.1 If either party to this Part 2 Agreement suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a claim of additional cost or time related to this claim is to be asserted, it shall be filed in writing.
- 12.5 **INDEMNIFICATION**
- 12.5.1 To the fullest extent permitted by law, the Design/Builder shall indemnify and hold harmless the Owner, Owner's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Design/Builder, anyone directly or indirectly employed by the Design/Builder or anyone for whose acts the Design/Builder may be liable, regardless of whether or not such claim, damage, loss or

expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 12.5.

- 12.5.2 In claims against any person or entity indemnified under this Section 12.5 by an employee of the Design/Builder, anyone directly or indirectly employed by the Design/Builder or anyone for whose acts the Design/Builder may be liable, the indemnification obligation under this Section 12.5 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design/Builder under workers' compensation acts, disability benefit acts or other employee benefit acts.

12.6 SUCCESSORS AND ASSIGNS

- 12.6.1 The Owner and Design/Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Part 2 Agreement and to the partners, successors and assigns of such other party with respect to all covenants of this Part 2 Agreement. Neither the Owner nor the Design/Builder shall assign this Part 2 Agreement without the written consent of the other. The Owner may assign this Part 2 Agreement to any institutional lender providing construction financing, and the Design/Builder agrees to execute all consents reasonably required to facilitate such an assignment. If either party makes such an assignment, that party shall nevertheless remain legally responsible for all obligations under this Part 2 Agreement, unless otherwise agreed by the other party.

12.7 TERMINATION OF PROFESSIONAL DESIGN SERVICES

- 12.7.1 Prior to termination of the services of the Architect or any other design professional designated in this Part 2 Agreement, the Design/Builder shall identify to the Owner in writing another architect or other design professional with respect to whom the Owner has no reasonable objection, who will provide the services originally to have been provided by the Architect or other design professional whose services are being terminated.

12.8 EXTENT OF AGREEMENT

- 12.8.1 This Part 2 Agreement represents the entire agreement between the Owner and the Design/Builder and supersedes prior negotiations, representations or agreements, either written or oral. This Part 2 Agreement may be amended only by written instrument and signed by both the Owner and the Design/Builder.

ARTICLE 13 - TERMINATION OF THE AGREEMENT

13.1 TERMINATION BY THE OWNER

- 13.1.1 This Part 2 Agreement may be terminated by the Owner upon 14 days' written notice to the Design/Builder in the event that the Project is abandoned. If such termination occurs, the Owner shall pay the Design/Builder for Work completed and for proven loss sustained upon materials, equipment, tools, and construction equipment and machinery, including reasonable profit and applicable damages.
- 13.1.2 If the Design/Builder defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents or fails to perform the provisions of this Part 2 Agreement, the Owner may give written notice that the Owner intends to terminate this Part 2 Agreement. If the Design/Builder fails to correct the defaults, failure or neglect within seven (7) days after being given notice, the Owner may then give a second written notice and, after an additional seven (7) days, the Owner may without prejudice to any other remedy terminate the employment of the Design/Builder and take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the Design/Builder and finish the Work by whatever method the Owner may deem expedient. If the unpaid balance of the Contract Sum exceeds the expense of finishing the Work and all damages incurred by the Owner, such excess shall be paid to the Design/Builder. If the expense of completing the Work and all damages incurred by the Owner exceeds the unpaid balance, the Design/Builder shall pay the difference to the Owner. This obligation for payment shall survive termination of this Part 2 Agreement.

13.2 **TERMINATION BY THE DESIGN/BUILDER**

13.2.1 If the Owner fails to make payment when due, the Design/Builder may give written notice of the Design/Builder's intention to terminate this Part 2 Agreement. If the Design/Builder fails to receive payment within seven (7) days after receipt of such notice by the Owner, the Design/Builder may give a second written notice and, seven (7) days after receipt of such second written notice by the Owner, may terminate this Part 2 Agreement and recover from the Owner payment for Work executed and for proven losses sustained upon materials, equipment, tools, and construction equipment and machinery, including reasonable profit and applicable damages.

ARTICLE 14 - OTHER CONDITIONS AND SERVICES

14.1 Unless the Owner and the Design/Builder mutually agree to begin a sub-set of the work prior to the Owner's approval of Part 1-B, the Design/Builder will begin the Basic Services to be performed under Part 2 upon the Owner's approval of Part 1-B. Substantial Completion, subject to authorized adjustments and to delays beyond the control of the Design/Builder, shall be achieved by 00/00/0000.

14.2 (Applicable only if checked)

SHOULD THE DESIGN/BUILDER FAIL TO ACHIEVE SUBSTANTIAL COMPLETION WITHIN THE NUMBER OF DAYS ALLOTTED FOR COMPLETION OF PART 2, the DESIGN/BUILDER shall incur damages. Damages will be charged as actual, documented expenses incurred by the University for not possessing the functional space, but not to exceed (\$) dollars for the entire contract term.

Prior to the attachment of damages, the Owner will give the Design/Builder a ten (10) day written notice, that the Owner claims that damages have been incurred.

14.3 The Design/Builder shall submit an Application for Payment on the 1st day of each month.

14.4 (Applicable only if checked)

The Design/Builder's Proposal includes the following documents:

ARTICLE 15 – ATTACHMENTS

15.1 Attachments incorporated into this Agreement are as follows:

- Attachment 1: University System of New Hampshire General Conditions of the Contract for Design-Build Version 1.3, dated January 5, 2015 is incorporated by reference and available at this web site: <http://www.unh.edu/purchasing/forms.html> in the "construction forms" section.
- Attachment 2: Design/Builder's proposal dated _____, which is incorporated by reference and is on file in electronic format at University System of New Hampshire Purchasing and Contract Service, 11 Brook Way, Durham, New Hampshire, 03824.
- Attachment 3A: Construction Specifications entitled " " which is incorporated by reference and is on file in electronic format at University System of New Hampshire Purchasing and Contract Service, 11 Brook Way, Durham, New Hampshire, 03824. Associated Table of Contents is included as Attachment 3A.
- Attachment 3B: Drawings entitled " " which is incorporated by reference and is on file in electronic format at University System of New Hampshire Purchasing and Contract Service, 11 Brook Way, Durham, New Hampshire, 03824. Associated Table of Contents is included as Attachment 3B.
- Attachment 4: Design/Builder's construction schedule entitled " ", dated _____.
- Attachment 5: Schedule of values provided by _____, dated _____.
- Attachment 6: Design/Builder's _____ list of engaged Sub-contractors

- Attachment 7: Design/Builder's Clarifications and Exclusions entitled " _____ ", dated _____.
- Attachment 8: Other Attachments as provided or required.

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EXECUTION

This Agreement will become effective when all parties have signed it. The date of this Agreement will be the date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature.)

Each party is signing the Agreement on the date stated under the party's signature.

FOR THE UNIVERSITY SYSTEM OF NEW HAMPSHIRE

FOR THE DESIGN/BUILDER

By: _____
Paul D. Chamberlin
Associate Vice President for Facilities
University of New Hampshire

By: _____
Individual Name
Title
Company Name

Date: _____

Date: _____

By: _____
Christopher D. Clement
Vice President - Finance and Administration
University of New Hampshire

Date: _____

By: _____
Catherine A. Provencher
Vice Chancellor for Financial Affairs and Treasurer
University System of New Hampshire

Date: _____