

# Michigan State University Short Form Standard Conditions Contract for Design Professional Services

**Article I. ACCOUNTING RECORDS:** Records of the Design Professional's staff time and reimbursable expense items, in connection with the project, and the records of account between the Owner and the construction contractors shall be kept on a generally approved and recognized accounting basis. These records, and all others necessary to evaluate fees charged to the Project, shall be available to the Owner's representatives for audit.

**Article II. FEES:** The approved total fee is that shown on the Purchase Order as Lump Sum or Estimated Cost. Additional fees exceeding the Lump Sum or Estimated Cost will not be paid without prior written approval from Engineering and Architectural Services Department, Physical Plant Division, Michigan State University.

**Article III. TERMINATION OF CONTRACT:** Either party may terminate this Contract by giving the other party thirty days written notice of such termination. The Owner shall pay the Design Professional only for services rendered prior to such termination. Upon receiving such notice, the Design Professional shall deliver to the Owner all information and materials that the Design Professional has accumulated in performing this Contract, whether completed or in process.

**Article IV. OWNERSHIP OF DOCUMENTS:** The Design Professional grants to the Owner a nonexclusive license to use and reproduce its Instruments of Service to construct, use, and maintain the Project. The Design Professional shall obtain similar nonexclusive licenses from its consultants consistent with this Contract. If this Contract is terminated before the Project is complete, the foregoing license will be deemed modified to a nonexclusive license permitting the Owner, at its sole risk, to authorize other similarly credentialed Design Professionals to reproduce and to make legal changes, corrections, or additions to the Instruments of Service solely for purposes of completing, using, and maintaining the Project.

**Article V. REPORTS:** The findings and conclusions from special investigations and analyses shall be submitted to the Owner in written form as soon as available.

**Article VI. ERRORS AND OMISSIONS:** The Design Professional is responsible for any loss or damage to property or personal injury, damage, or death to the extent caused by the negligence or intentional misconduct of the Design Professional, its employees or agents, while performing this Contract. The Design Professional shall indemnify, defend, and hold the Owner harmless against costs, losses, or damages arising from the negligent acts, errors, and/or omissions or the intentional misconduct of the Design Professional, its employees, or agents. The Design Professional is not responsible for negligence attributable to the Owner, its agents, other than the Design Professional, or its employees or agents.

**Article VII. DISPUTES, CLAIMS, OR QUESTIONS:** All disputes, claims or other matters in question arising out of, or relating to this agreement, shall be submitted by the Design Professional in writing to the Owner (University's Vice President for Finance and Operations) for a hearing. If satisfactory resolution is not obtained from the hearing, the Design Professional may then file the dispute with the Court of Claims maintained by the State of Michigan for the purpose of adjudicating such claims. Claims and any appeals by the Design Professional affecting the payment of the fee should be made prior to submission of the request for final payment. Unless otherwise instructed by the Owner, the Design Professional shall continue to pursue the obligations under this agreement without delay to the project, or any portion thereof, pending the disposition of a dispute, claim, or question.

**Article VIII. NON-DISCRIMINATION IN EMPLOYMENT:** The Design Professional, pursuant to the requirements of appropriate and applicable local, state, and federal regulations, agrees not to discriminate against any employee or applicant for employment, to be employed in the performance of this Contract, with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or handicap. The Design Professional further agrees that every subcontract entered into for the performance of this Contract will contain a provision requiring non-discrimination in employment, as herein specified, binding upon each subcontractor. Breach of this covenant may be regarded as material breach of the Contract.

**Article IX. SUCCESSORS AND ASSIGNS:** Neither party may assign any or all of its benefits or executory obligations under this Contract without the approval of the other party, except in case of assignment solely for security or assignment by the Owner to a related party of the Owner. The Owner and the Design Professional bind their successors and assigns to the other party of this Contract.

**Article X. INSURANCE LIMITS:** While performing specified services under the Contract, the Design Professional shall purchase and maintain the following insurance and include any subcontractor or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.

- (i) Worker's Compensation insurance, Coverage A, with limits statutorily required by any applicable Federal or state law and Employers Liability insurance, Coverage B, with a minimum limit of \$100,000 per accident.
- (ii) Automobile Liability insurance covering liability arising out of any owned, hired, and non-owned vehicles with a minimum limit of \$500,000 each accident and Personal Injury Protection as required by statute.
- (iii) Insurance, with a minimum limit of \$1,000,000 covering the wrongful acts, errors, and/or omissions of the Design Professional for damage sustained by reason of or in the course of operations under the Contract. Coverage shall apply for three years after the Project is complete.
- (iv) Commercial General Liability insurance with a minimum limit of \$500,000 each occurrence/\$1,000,000 general aggregate. Coverage shall be written on ISO 1998 form CG0001 or equivalent and include personal injury and advertising injury, independent contractors, products/completed operations, broad form property coverage, and liability assumed under an insured contract.

**Article XI. GENERAL INSURANCE REQUIREMENTS:** The Design Professional shall purchase and maintain insurance with limits as outlined in Article 10. The Design Professional's insurers shall comply with the following general requirements.

- (i) Insurance policies must be issued by companies licensed or approved to do business within the State of Michigan.
- (ii) All insurance carriers shall possess a minimum A.M. Best rating of A VII.
- (iii) The insurance policies, except for Worker's Compensation and Professional Liability, must be endorsed to name Michigan State University, its Board of Trustees, agents, officers,

employees, and volunteers as "Additional Insureds."

- (iv) In the event that any insurance policy(ies) required by this Contract is written on a claims-made basis, coverage shall extend for three years past completion and acceptance of the contractor's Work or services and must be evidenced by annual certificates of insurance.
- (v) A minimum 30 days written notice of cancellation or non-renewal of policies required under the Contract must be provided by certified mail to the University.
- (vi) All policies of insurance must be on a primary basis, non-contributory with any other insurance and/or self-insurance carried by the University.
- (vii) A renewal certificate must be provided at least 15 days before expiration.

Before commencing Work or services, the Design Professional shall furnish the University with certificates of insurance evidencing the required coverage, conditions, limits, and additional insureds and other applicable endorsements required by this Contract. The completed certificate of insurance must contain the following:

- Name and address of agent, phone number and fax number;
- Name of insurance company(ies) and policy number(s);
- Policy period;
- Name and address of insured;
- Description of coverage(s);
- Name/number of the Project;
- Policy limits;
- Special instructions (e.g., addition of Michigan State University as additional insured, waivers of subrogation, identification of Project or operations with respect to the certificate being issued;
- Michigan State University as the certificate holder; and
- Signature of the insurer's agent or representative and date.

The Design Professional agrees that the insurance requirements specified in the Contract do not limit the liability the Design Professional has assumed in the indemnification/hold-harmless section of the Contract.

If any professional liability insurance is canceled or not renewed, any substitute policy shall have a commencement date retroactive to the date upon which the Design Professional commenced performance of its services under the Contract.

Before performing services on the Project, the Design Professional shall ensure that its required insurance coverage and that of its consultants is in effect in accordance with the Contract. The Design Professional agrees that the University is not responsible for verifying compliance by the Design Professional or its consultants, contractors, subcontractors, or suppliers with any insurance requirements.

MSU reserves the right to approve the security of the insurance coverage regarding the terms, conditions, and the certificate of insurance provided by any insurance company. Failure of the Design Professional to fully comply with these requirements during the term of the Contract will be

considered a material breach of contract and will be cause for immediate termination of the Contract at the option of the University.

**Article XII, Conflict of Interest:** If the Design Professional or any of its principals, officers, employees, consultants, or agents has any direct or indirect financial interest in any material, product, system, equipment, design, process, or any other item included in the plans or specifications, it shall notify the Owner in writing of such interest when the plans and/or specifications are delivered to the Owner. The Owner may require the Design Professional to substantiate the reasons for including the item in the plans and/or specifications. The Owner may accept or reject the item. If the item is rejected, the Design Professional shall revise the plans and/or specifications to include an alternate or replacement at no cost to the Owner.

**Article XIII. Contamination, Claim, and Incident Reporting:** Within 12 hours of discovery, the Design Professional shall notify the Owner, both orally and in writing, of the presence and location of any environmental contamination of the Site of which it becomes aware, including but not limited to Hazardous Substances and petroleum releases.

**Article XIV. ELECTRONIC TRANSACTIONS:** The owner reserves the right to require that any or all transactions and submissions be conducted and delivered electronically through Unifier, a web-based project management software system. If the owner requires the use of Unifier, the owner will provide the necessary licenses for access into Unifier and the initial training necessary to use Unifier. Access to Unifier will be password restricted, and any proposal, acceptance, quote or other information submitted through Unifier through the use of a party's password shall be deemed to be the submission of such party and any proposal, acceptance, quote or other information in the submission shall be binding on such party as if such proposal, acceptance, quote or other information was in a writing signed by such party. Owner shall not be required to verify the validity of any such submission or inquire as to the authority of the user gaining access to Unifier through the use of a party's password. The following are the minimum Unifier user software and hardware requirements.

Browser:	Internet Explorer 6.0 SP2 or 7.0
Operating System:	Windows® XP SP2 or Vista
Display:	1024x768
CPU:	1.4 GHz or Greater
Connection:	ISDN, T1, or DSL
RAM:	1024 MB/ 1 GB or higher

**Article XV. CONSTRUCTION CLOSEOUT:** The following services are to be performed before the 1% closeout (final payment) will be paid by the Owner to the Design Professional.

- (i) Prepare and issue certificates of completion and final certificates of payment.
- (ii) Assemble and transmit required waivers, guarantees, certificates, affidavits, operating instructions, manufacturers' brochures, and maintenance manuals to the Owner.
- (iii) Comment on the Owner's furnishing and equipment selection for the Project as they relate to the Design Professional's general design objectives.
- (iv) Prepare and transmit reproducible record drawings to the Owner, recording all construction changes based on marked-up prints, drawings and other data furnished by the contractor. Provide one complete set of drawings on vellum, and one complete set of AutoCAD files. Label each drawing "Record

Document” and date. Refer to the “MSU Electronic Document Submittal Standards” (Appendix D) when submitting the AutoCAD files.

- (v) Certify completion of a complete building systems operation manual to the Owner.