

**UNIVERSITY OF THE PACIFIC
STANDARD PROFESSIONAL SERVICES AGREEMENT**

This Standard Services Agreement (this “**Agreement**”) is made and entered into effective as of _____, 2015 (the “**Effective Date**”) by and between University of the Pacific, a California nonprofit public benefit corporation (“**University**”), and _____, [if an entity, describe state of organization and type of entity (*i.e.*, a California corporation); if an individual, so state and include any applicable dba (*i.e.*, an individual d/b/a XYZ Consulting)] (“**Consultant**”).

Recitals

A. University is an independent, comprehensive university offering more than eighty (80) undergraduate and graduate majors and degrees through eight (8) schools and colleges at its campuses in Stockton, Sacramento, and San Francisco.

B. Subject to the terms and conditions of this Agreement, University desires to engage Consultant to provide _____ Services (the “**Services**”) for it’s _____ Project on the University of the Pacific Stockton, California campus, and Consultant desires to provide such Services to the University.

In consideration of the promises and the mutual covenants and agreements set forth below, the parties hereto agree as follows:

Agreement

1. **Services.** Consultant agrees to perform the Services required under this Agreement and as specifically set forth in the scope of work attached hereto and incorporated herein by reference as **Exhibit A** (“**Scope of Work**”). Use of the term “Agreement” shall include the Scope of Work and all other exhibits, schedules or attachments referenced herein. Consultant and its employees shall perform all the Services and Consultant may not subcontract to any third party any portion of the Services without University’s prior written consent.

2. **Progress Reports.** Consultant shall prepare monthly progress reports in such form required by the University. Each monthly progress report shall specify, among other things, an estimated percentage of completion, whether the Project is on schedule, and if not, the reasons therefor and the new schedule, a summary of work to be completed in the next succeeding month, summary of all data collected and summary of all meetings held noting attendees and topics of discussion. Weekly progress reports may be required if Project progress is not consistent with the currently University-approved schedule. The Consultant shall cooperate with the University to prepare such additional reports as required by the University.

3. **Compensation and Expenses.** University shall pay to Consultant the fees set forth in the Scope of Work (“**Fees**”). Unless otherwise stated in the Scope of Work, the Fees shall include, and Consultant shall be responsible for, all expenses and taxes incurred by Consultant in connection with providing the Services.

Reimbursable Expenses (invoiced at cost plus 10% with submission of receipts and documentation of all expenditures):

Reimbursable Expenses are in addition to Consultant's compensation for Services performed and include expenses incurred by the Consultant and the Consultant's employees and sub-consultants directly related to the Project for:

- (a) Owner authorized travel and subsistence cost (if travel time is not also billed as professional services time) payable in accordance with the travel reimbursement policies applicable to employees of the Owner;
- (b) Reasonable long-distance telephone services, dedicated data and communication services, teleconferences, Project websites and extranets;
- (c) Owner requested printing, reproductions, plots, standard form documents;
- (d) Reasonable postage, handling and delivery of documents for bidding purposes, Owner review(s), or other specially mandated or required review(s) or as otherwise requested by the Owner;
- (e) Renderings, models, mock-ups, and professional photography requested by the Owner;
- (f) Owner authorized special computer studies, videos or CDs, or Owner authorized special reports required by any unique characteristic of the Project; and
- (g) Reproduction of record drawings.

Reimbursable Expenses not submitted within ninety (90) calendar days of the date of the incurred expense will not be reimbursed.

4. **Payment Terms.** Consultant shall submit to University on a monthly basis an invoice listing in detail all Services provided to University and Fees incurred by Consultant in the prior month ("**Invoice**"). University shall remit payment to Consultant on undisputed Invoices within forty-five (45) days (excluding holidays) of receiving the Invoice. The provisions of this Section 4 shall apply unless different payment terms are set forth in the Scope of Work.

(a) In the event Consultant retains any sub-consultants or subcontractors to perform any services Consultant shall pay all its sub-consultants and subcontractors not later than seven (7) days after receipt of each payment from the University for undisputed services provided by the sub-consultant or subcontractor.

5. **Term and Termination.**

(a) Term. The term of this Agreement shall commence on the Effective Date and shall expire as set forth in the Scope of Work, provided that this Agreement may be terminated earlier as provided in this Section 5.

(b) Termination Without Cause. University may terminate this Agreement at any time, without cause or penalty, by giving at least thirty (30) days' advance written notice to Consultant.

(c) Termination For Cause. Each party shall have the right to terminate this Agreement in the event of the other party's material breach of an obligation, representation, or warranty set forth in this Agreement; provided, however, that such termination will not become effective unless and until (i) the party not in default has given the other party written notice of breach, which notice shall state in reasonable detail the nature of said breach, and (ii) the party allegedly in default shall have failed to remedy said default to the reasonable satisfaction of the party not in default within ten (10) business days following the giving of the notice. Material breach shall include, but not be limited to, Consultant's failure to perform the Services in accordance with the terms set forth in this Agreement including the Scope of Work (with time being deemed of the essence with respect to adherence to any timetable set forth in the Scope of Work or otherwise agreed to in writing by Consultant).

(d) Effect of Termination. Any early termination of this Agreement, whether for a party's breach or otherwise, shall be without prejudice to any claims or damages or other rights of one party against the other party. In the event of early termination of this Agreement by either party:

(i) University shall pay Consultant all undisputed amounts due for Services rendered and, if applicable, non-refundable expenses incurred, prior to the termination date; provided, however, that University may set off and apply all or any portion of the amount owing by University to Consultant against any and all damages or other amounts owed by Consultant to University. The Consultant shall not be entitled to anticipated profits.

(ii) If any Fees have been prepaid by University, Consultant shall refund to University the amount of any such prepaid Fees that exceeds the value of Services actually rendered by Consultant prior to the termination date.

(iii) Consultant shall deliver to University, at a time and in a manner acceptable to University, all Confidential Information (as defined below in Section 7) and copies of all finished or unfinished Work Product (as defined below in Section 8), whether in paper, electronic, or any other form.

(iv) The provisions of Sections 5(d) (Effect of Termination), 6 (Independent Contractor Relationship), 7 (Acknowledgment of Ineligibility for Benefits), 8 (Confidentiality), 9 (Ownership of Work Product), 10 (Consultant's Representations and Warranties), 11(b) (Continuous Coverage), 12 (Indemnification), 13 (Limitation on Damages), 14 (Governing Law), 15 (Dispute Resolution), 16 (Use of Names and Logos), 19 (Notice), 24 (No Third Party Beneficiaries), 27 (Captions), 28 (Construction), 31 (Severability of Terms) and 33 (Entire Agreement) shall survive termination of this Agreement.

6. Independent Contractor Relationship. Consultant enters into this Agreement as, and shall continue to be, an independent contractor. Except as set forth in this Agreement, Consultant shall determine the method, details, and means of performing the Services. Neither Consultant nor Consultant's employees or subcontractors shall be deemed to be employees or agents of University. Consultant is responsible for direct payment, when and as due, of any taxes incurred as a result of the compensation paid under this Agreement, including estimated taxes, as well as for any such payments with respect to Consultant's employees or

subcontractors, and Consultant shall provide University with proof of payment upon request. Nothing in this Agreement is intended to establish a partnership, joint venture, or agency relationship between the parties, and neither Consultant nor Consultant's employees or subcontractors are authorized to bind University or make any representations on its behalf in any matter.

7. **Acknowledgement of Ineligibility for Benefits.** Consultant and Consultant's employees or subcontractors will not be entitled to, and will not seek, any benefits made available to University employees, including, but not limited to: worker's compensation, group health insurance, disability insurance, or participation in any employee retirement plan.

8. **Confidentiality.**

(a) Proprietary Information. At all times hereafter, Consultant will keep in confidence and trust all Confidential Information (as defined below) that Consultant learns of or receives during the term of this Agreement, and will not use, reproduce, or disclose to others any Confidential Information without University's advance written consent, except (i) as may be directly necessary in the ordinary course of performance of the Services under this Agreement, or (ii) in accordance with a judicial or other governmental order, provided however, that, to the extent reasonably possible, Consultant shall give University reasonable notice prior to making any such disclosure in sufficient time so University may object to such disclosure if it so chooses, and provided further, that Consultant shall disclose only that portion of the Confidential Information that it is legally required to disclose. "Confidential Information" shall mean any and all proprietary information of University, including, without limitation, information on University finances, employees, students, or alumni, and information relating to any current, future, or proposed University program, project, business practice, method of operation, funder, or marketing plan. "Confidential Information" also includes proprietary or confidential information of any third party who may disclose such information to University in the normal course of business. "Confidential Information," however, shall not include any information which Consultant can establish (x) was known to Consultant before disclosure to Consultant under this Agreement as a result of being made generally available in the public domain, or (y) becomes publicly known and made generally available in the public domain after disclosure to Consultant under this Agreement, or is received by Consultant from a source other than University, in both cases other than by a breach of an obligation of confidentiality. Consultant further agrees that it shall not disclose the existence or terms of this Agreement to any third party without the prior written consent of University. Consultant's failure to comply with the provisions of this Section 8(a) shall constitute a material breach of this Agreement.

(b) Student Records. If University provides Consultant with access to any "personally identifiable information" from student education records as defined by the Family Educational Rights and Privacy Act and its implementing regulations (collectively, "**FERPA Protected Information**"), Consultant hereby certifies that access to FERPA Protected Information is necessary for the performance of the Services and Consultant's duties and responsibilities under this Agreement, and agrees that Consultant shall be subject to, and shall comply with, the same conditions and restrictions on the use and re-disclosure of FERPA Protected Information as apply to University pursuant to applicable law. Consultant's failure to comply with the provisions of this Section 8(b), or Consultant's failure to abide by legally

applicable security measures and disclosure and re-disclosure restrictions with regard to FERPA Protected Information, shall constitute a material breach of this Agreement.

(c) Protected Health Information. It is possible that in providing the Services, Consultant may have or be provided access to “protected health information” (“**PHI**”) as that term is defined in the Health Insurance Portability and Accountability Act of 1996 and the rules and regulations promulgated thereunder (collectively, “**HIPAA**”). Consultant agrees and acknowledges that all protected health information shall be treated as Confidential Information as defined above in Section 8(a).

9. **Ownership of Work Product**. Consultant acknowledges and agrees that all work product or deliverables prepared for, arising from, related to, or incorporated in the Services including, without limitation, all ideas, concepts, inventions, expressions, information, material, works of authorship, plans, programs, programming code, systems, work notes, drafts, specifications, design documents, flow charts, software programs, reports, analyses, data, surveys, print copy, artwork, plates, photo negatives and positives, boards, preliminary outlines, sketches, letters, invoices, proposals, databases, and reports (collectively, “**Work Product**”) shall be owned solely and exclusively by University, including without limitation, all corrections, modifications, and derivative works to such Work Product. The Work Product shall be considered University’s Confidential Information for purposes of Section 8. Notwithstanding anything to the contrary in this Agreement, the Consultant shall have the right to retain copies and use the instruments of service for any lawful purpose, including without limitation use of elements of the design on other projects, provided that the Consultant shall be responsible for the consequences of such use.

10. **Consultant’s Representations**.

(a) Authorization. Consultant represents that Consultant has full power and authority to enter into this Agreement and to carry out the Services contemplated by this Agreement, and that the execution, delivery, and performance of this Agreement have been duly authorized by all requisite corporate action on the part of Consultant.

(b) Compliance with Laws. Consultant represents that Consultant will comply with all laws, ordinances, statutes, regulations, codes and the Owner’s Standards, applicable to the performance of its obligations under this Agreement and to the provision of the Services.

(c) No Violations. Consultant represents that Consultant’s execution, delivery, and performance of this Agreement will not constitute: (i) a violation of any judgment, order, or decree binding on Consultant; (ii) a breach under any contract by which Consultant is bound; or (iii) an event that would, with notice or lapse of time, or both, constitute such a breach.

(d) Performance Warranty. Consultant represents that the Services will be performed with the degree of skill and care that is required by current, good, and sound professional procedures and practices, and in conformance with generally accepted professional procedures and industry standards prevailing at the time the Services are performed, and that all Services meet the specifications set forth in the Scope of Work. Consultant further represents and

warrants that Consultant and all personnel used to perform the Services, including permitted subcontractors, possess the knowledge, skill, and experience necessary to perform the Services.

(e) Licenses and Permits. Consultant represents that Consultant has, and shall maintain in effect for the duration of this Agreement, all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for Consultant to render the Services. Consultant shall also ensure that all permitted subcontractors are similarly licensed and qualified.

(f) Intellectual Property. Consultant represents that no Work Product prepared or produced by Consultant pursuant to this Agreement, nor the use of any such Work Product by University, will infringe or constitute an infringement of any intellectual property right of any third party, that no third party shall have any proprietary rights in any Work Product, and that Consultant has the authority to deliver title free and clear of all liens or encumbrances to all such Work Product to University. Consultant also represents that unless otherwise specifically stated in the Scope of Work, no proprietary information of Consultant or any permitted subcontractor will be included in any Work Product and that to the extent Work Product includes any permitted third party proprietary information, including that of Consultant, delivery of the Services shall include a perpetual, non-exclusive, world-wide, royalty free license to use such proprietary information for the purposes for which it was provided.

11. Consultant's Insurance.

(a) Required Insurance Coverage. Consultant shall, at Consultant's sole cost and expense, procure and maintain for the duration of this Agreement the insurance coverage set forth below for claims arising from Consultant's performance under this Agreement and for which Consultant may be legally liable, whether such liability results from any actions or omissions of Consultant, Consultant's subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable:

(i) Commercial General Liability insurance coverage to include premises and operations, personal/advertising injury, products/completed operations, and liability assumed under an insured contract (including defense costs assumed under contract), with limits of not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) general aggregate, and Two Million Dollars (\$2,000,000) products/completed operations aggregate. Such insurance shall provide, or be endorsed to provide, that University and its officers, directors, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of Consultant's performance under this Agreement.

(ii) Workers' Compensation insurance covering Consultant's own employees as required by law, to include Employer's Liability coverage with a limit of not less than One Million Dollars (\$1,000,000) per accident for bodily injury or disease.

(iii) Errors and Omissions Liability insurance appropriate to Consultant's profession with limits of not less than One Million Dollars (\$1,000,000) per occurrence/claim and Two Million Dollars (\$2,000,000) aggregate.

(iv) If an automobile is to be used by Consultant in performing the Services, a policy of comprehensive automobile liability insurance covering the operation of all automobiles used in connection with the performance of this Agreement (whether owned, non-owned, or hired) with such policy to afford protection to the limit of One Million Dollars (\$1,000,000) with respect to bodily injury or death of any one person, One Million Dollars (\$1,000,000) with respect to bodily injury or death of any number of persons in any one occurrence, and One Million Dollars (\$1,000,000) with respect to damage to property of any one owner from one occurrence. Such insurance shall provide, or be endorsed to provide, that University and its officers, directors, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of Consultant's performance under this Agreement.

(v) Valuable Papers and records coverage for plans, specifications, drawings, reports, maps, books, blueprints, and other printed and electronic documents on an all-risk basis in an amount sufficient to cover the cost of research, re-creation or reconstruction of valuable papers or records related to the Services.

(vi) The Consultant shall require all sub-consultants and subcontractors to maintain the same insurance coverage as is required in this Agreement of Consultant. Such insurance shall provide, or be endorsed to provide, that University and its officers, directors, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of sub-consultant's or subcontractors performance under this Agreement.

(b) Continuous Coverage. Should any of the insurance required of Consultant under this Agreement be provided under a claims-made form, Consultant shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the expiration or earlier termination of this Agreement, such that, should occurrences during the term of this Agreement give rise to claims made after the expiration or termination of this Agreement, such claims shall be covered by such claims-made policy (or an equivalent policy affording prior acts coverage).

(c) Insurance Carriers. All insurance required of Consultant hereunder shall be through insurance carriers licensed to do business in the State of California and otherwise reasonably acceptable to University.

(d) Certificates and Endorsements. Consultant shall furnish University with original certificates and amendatory endorsements affecting the insurance coverage required of Consultant under this Agreement. All certificates and endorsements are to be received and approved by University before performance under the Agreement commences, and on an annual basis thereafter for the duration of the term of this Agreement. University reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications, at any time.

(e) Waiver of Subrogation; Cancellation or Modification. Each insurance policy required of Consultant under this Agreement shall include a waiver of subrogation clause and shall be endorsed to state that Consultant's coverage shall not be canceled, modified, or materially changed except after thirty (30) days' prior written notice by certified mail, return receipt requested, to the person set forth in Section 19 below has been given to University.

(f) Consultant's Insurance Primary. For any claims arising out of this Agreement, Consultant's insurance coverage, whether or not required under this Agreement, shall be primary insurance as respects University, its regents, officers, directors, employees, and volunteers. Any insurance or self-insurance maintained by University, its regents, officers, directors, employees, or volunteers shall be excess of Consultant's insurance and shall not contribute with it. Consultant agrees that it shall obtain any necessary endorsements to its insurance policies to effect the requirements of this paragraph.

12. **Indemnification.**

(a) Indemnification by Consultant. Consultant agrees to hold harmless, defend (with counsel acceptable to University), and indemnify University and its regents, officers, directors, employees and agents (each an "**Indemnified Party**" and collectively, "**Indemnified Parties**") from and against all claims, damages, losses, and expenses (including without limitation attorneys' fees and costs of litigation) arising out of (i) the performance of the Services, except to the extent that such claims, damages, losses, or expenses are caused by the active negligence, sole negligence, or willful misconduct of University, or (ii) any breach or default in the performance of any of Consultant's obligations hereunder including, without limitation, any breach of any warranty or representation.

(b) Defense of Claims. In the event an Indemnified Party is made a party to any action or proceeding by reason of any matter for which Consultant has hereby agreed to indemnify the Indemnified Party, then Consultant, upon notice from the University, shall defend such action or proceeding on behalf of the Indemnified Party at Consultant's sole cost and expense. If Consultant or its attorney is not vigorously or adequately defending any such claim, the Indemnified Party shall have the right, but not the obligation, to join and participate in, as a party if it so elects, any proceedings or actions related to such claims and to have its attorneys' fees and costs in connection therewith paid by Consultant. Notwithstanding the foregoing, the University may participate at any time in proceedings with counsel of its own choosing at its own cost.

(c) Judgment or Settlement of Claims. Consultant shall not consent to the entry of any judgment or enter into any settlement with respect to any third-party claim without the prior written consent of the Indemnified Party (not to be unreasonably withheld) unless the judgment or proposed settlement involves only the payment of money damages to be paid solely by Consultant or its insurance carrier and does not impose an injunction or other equitable relief upon the Indemnified Party.

(d) Survival. This indemnity shall not be limited by reason of any insurance coverage required under this Agreement and shall survive termination of this Agreement.

13. **Limitation on Damages.** In no event shall either party be liable to the other party for any special, consequential, indirect, exemplary, punitive, incidental, or similar damages (including, without limitation, loss of profits), even if such party has been apprised of the possibility thereof; provided, however, that the foregoing limitation shall not apply in the event that Consultant breaches any of the provisions of Sections 8 (Confidentiality) or 10(f) (Intellectual Property) of this Agreement.

14. **Governing Law.** This Agreement, and any dispute between the parties arising out of this Agreement, shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of laws rules.

15. **Dispute Resolution; Legal Fees and Costs; Forum for Legal Action.**

(a) Meet and Confer. In the event of any dispute, controversy, claim, or disagreement arising out of or related to this Agreement or the acts or omissions of the parties with respect to this Agreement (each, a “**Dispute**”), the parties shall, as soon as reasonably practicable after one party gives written notice of a Dispute to the other party (the “**Dispute Notice**”), meet and confer in good faith regarding such Dispute at such time and place as mutually agreed upon by the parties. If any Dispute is not resolved to the mutual satisfaction of the parties within ten (10) business days after delivery of the Dispute Notice (or such other period as may be mutually agreed upon by the parties in writing), the parties shall settle such Dispute as otherwise set forth in this Section 15.

(b) Other Proceedings. In the event a Dispute is not resolved by the meet and confer provisions under Section 15(a) above, the parties may choose any other available legal means to settle the Dispute. Each party agrees that a violation or threatened violation of this Agreement may cause irreparable injury to the other party, entitling the other party to seek injunctive relief in addition to all legal remedies.

(c) Legal Fees and Costs. Each party shall be entitled to recover the cost of enforcing the understanding and agreements as reflected herein, including, without limitation, any attorney’s fees and costs incurred.

(d) Forum for Legal Action. Any and all legal action that is initiated to enforce any provision of this Agreement or arising out of or related to this Agreement must be brought or filed in either the state or federal court of California.

16. **Use of Names and Logos.** Consultant agrees that it shall not use the University’s name, or the name of any school or division thereof, or any logo or insignia of the University or any school or division thereof, or otherwise identify the University or any of its schools or divisions in any form of publicity or disclosure without the prior written permission of the University, which permission may be given or withheld in the University’s sole discretion.

17. **No Assignment.** The Services to be rendered pursuant to this Agreement are personal in nature, and Consultant may not, voluntarily or by operation of law, assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the University.

18. **No Subcontracting.** Notwithstanding anything in this Agreement to the contrary, Consultant may not use any subcontractor to perform any of Consultant’s obligations under this Agreement unless (a) Consultant has obtained the prior written consent of the University to the use of the subcontractor, and (b) Consultant has entered into a separate written agreement with the subcontractor which requires the subcontractor to agree to and abide by all the terms and conditions of this Agreement. The University shall be deemed to be a third party beneficiary of any such agreement between Consultant and a permitted subcontractor. Notwithstanding the

foregoing, Consultant shall not be relieved of any of its duties or obligations under this Agreement as a result of entering into a written agreement with a permitted subcontractor.

19. **Notice.** All notices or other communications given hereunder shall be in writing and shall be deemed to have been duly given (a) on the date delivered if delivered by personal delivery or by overnight delivery service (such as FedEx); (b) on the third (3rd) business day after mailing via U.S. registered or certified mail, first class, postage prepaid; or (c) on the date transmitted by facsimile with confirmation of successful transmission. Any notices or other communications given hereunder shall be addressed as follows, provided that either party may specify a different address by written notice to the other party in accordance with this paragraph:

If to University: University of the Pacific
West Memorial Center
3601 Pacific Avenue
Stockton, California 95211
Attn: Kenneth M. Mullen
Fax number: 209-946-2203

If to Consultant: [Consultant]
[Address]
[City, State, Zip]
Attn: _____
Fax number: _____

20. **Compliance with Laws.** Each party shall be separately responsible for compliance with all laws, rules, and regulations which may be applicable to its respective activities under this Agreement.

21. **Accreditation, Licensing, and Credentials.** Each party shall be separately responsible for accreditation, licensing, and credentialing of its own entities and employees, as applicable, and each party agrees to furnish to the other evidence of such accreditation, licensing, and credentials upon request by the other.

22. **Hazardous Materials.** Unless otherwise required in this Agreement, the Consultant shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the site.

23. **Audit Rights.** The University and/or its accountants, auditors, and agents shall, upon reasonable prior notice and during customary business hours, be entitled to audit, inspect, examine, and reproduce all of the Consultant's information, materials, records, or data relating to the Services, including, but not limited to, accounting records, written policies and procedures, subcontract files (including subcontracts, proposals of successful and unsuccessful bidders, bid recaps, etc.), original estimates, estimating work sheets, correspondence, Change Order files (including documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, drawings, receipts, purchase orders, vouchers, memoranda, subscriptions, recordings, computerized information, drawing, agreements, and other information, materials,

records or data relating to the Services (“Records”). Such Records shall also include information, materials, records or data necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. In those situations where Consultant’s Records have been generated from computerized data, the Consultant agrees to provide the University with extracts of data files in computer readable format on disks or suitable alternative computer exchange formats.

(a) The Consultant shall preserve the Records for a period of twelve (12) years after final payment or for such longer period as required by law, provided, however, that if a claim is asserted during said twelve (12) years period, the Consultant shall retain all such Records until the claim has been resolved. Prior to destruction of Records, the Consultant shall notify the University of its intent to destroy the Records and shall allow adequate time for the University to request these Records be sent to the University in lieu of destruction.

(b) The Consultant shall require all sub-consultants and subcontractors to comply with the provisions of this Section by insertion of the requirements hereof in a written agreement between the Consultant and the sub-consultant or subcontractor.

(c) If an audit discloses overpricing or overcharges (of any nature) by the Consultant to the University, in addition to repayment or credit for overcharges, the reasonable, actual costs of the audit shall be reimbursed to the University by the Consultant. Any adjustments and/or payments that must be made as a result of any audit shall be made within a reasonable time not to exceed ninety (90) days from presentation of the University’s findings to the Consultant.

24. **No Third Party Beneficiaries.** No provision of this Agreement is intended to confer any benefit upon any third party and no third party shall have the right to enforce any provision of this Agreement.

25. **Non-Discrimination and Equal Employment Opportunity.** Consultant shall comply with the California Fair Employment and Housing Practices Act (Government Code 12900 et seq.) and any amendments thereto. No discrimination shall be made in the employment of persons upon because of the race, religious creed, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual orientation, sex of such persons, or disability or veteran status, except as provided in Section 12940 of the Government Code, and violating this section is subject to all the penalties imposed for a violation of Chapter I of Part 7, Division 2 of the Labor Code.

26. **Waiver.** No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

27. **Captions.** All paragraph and section captions and headings in this Agreement are for convenience of reference only and shall not be considered in construing this Agreement.

28. **Construction.** This Agreement shall be interpreted in an even-handed manner and without regard to any presumption against the party that was responsible for its drafting.

29. **Time of Essence.** Time is of the essence with respect to every provision of this Agreement.

30. **Day.** "Day" as used herein shall mean and refer to a calendar day.

31. **Severability of Terms.** If any provision of this Agreement is held invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

32. **Modifications.** This Agreement including, without limitation, the Scope of Work, may not be modified except by an instrument in writing executed by duly authorized representatives of the parties.

33. **Entire Agreement.** This Agreement together with the exhibits hereto constitutes the entire agreement between the parties pertaining to its subject matter, superseding all prior and contemporaneous agreements, proposals, letters of intent and memorandums of understanding, and no other representations or understandings of the parties, whether written or oral, shall be binding.

34. **Counterparts.** This Agreement may be executed in several counterparts, each of which so executed shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been duly executed on behalf of the parties hereto as of the Effective Date.

UNIVERSITY OF THE PACIFIC

By: _____

Name: Kenneth M. Mullen

Title: Vice President for Business and Finance

CONSULTANT

By: _____

Name: _____

Title: _____