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## **ConsensusDocs® 820** **STANDARD AGREEMENT BETWEEN OWNER AND COMMISSIONING AUTHORITY**

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# ConsensusDocs® 820

## STANDARD AGREEMENT BETWEEN OWNER AND COMMISSIONING AUTHORITY



Job Number: [ ]

Account Code: [ ]

This Agreement is made this [ ] day of [ ] in the year [ ],

by and between

OWNER, [ ]

and the

COMMISSIONING AUTHORITY, [ ]

Tax identification number (TIN) [ ]

License Identification for the state of the Project, if applicable [ ]

for commissioning services in connection with the following

PROJECT: [ ].

DESIGN PROFESSIONAL: [ ]

**Owner and Commissioning Authority are collectively the "Parties." Notice to the Parties shall be given at the above addresses.**

The CONSTRUCTOR is [ ].

1. PARTIES' RELATIONSHIP AND ETHICS The Parties agree to work together on the basis of mutual trust, good faith, and fair dealing, and shall take actions reasonably necessary to enable each other to perform this Agreement in a timely, efficient, and economical manner. Commissioning Authority shall furnish or provide the commissioning services necessary to commission the Project in accordance with Owner's Program and other relevant data and information defining the Project, which is attached as Exhibit A. The Parties shall perform their obligations with integrity, ensuring at a minimum that each: (a) avoids conflicts of interest and promptly discloses any to the other Party, and (b) warrants that it has not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including its



agents, officers, and employees, Subcontractors, or others for whom they may be liable, to secure preferential treatment.

## 2. COMPENSATION

2.1 As full compensation for Basic Services provided, Owner shall compensate Commissioning Authority on the following basis: [\_\_\_\_\_].

2.2 As full compensation for Additional Services provided, Owner shall compensate Commissioning Authority on the following basis: [\_\_\_\_\_].

2.3 Reimbursable Expenses, as described in Exhibit B, shall be paid or reimbursed at their actual cost, unless otherwise provided in Exhibit B.

## 3. EXHIBITS The following exhibits are made part of this Agreement:

EXHIBIT A: Owner's Program and other Project Data and Information, dated [\_\_\_], [\_\_\_] pages.

EXHIBIT B: Reimbursable Expenses, dated [\_\_\_],[\_\_\_] pages.

EXHIBIT C: Commissioning Authority's Insurance, dated [\_\_\_], [\_\_\_] pages.

EXHIBIT D: Schedule of Worksite Visits, dated [\_\_\_], [\_\_\_] pages.

EXHIBIT E: Commissioning Authority's Services.

EXHIBIT F: Responsibility Matrix.

## 4. GENERAL PROVISIONS

4.1 STANDARD OF CARE The standard of care for commissioning services performed under this Agreement shall be in accordance with the standard of professional skill and care required for services of this type for a Project of similar size, scope, and complexity, during the time in which the commissioning services are provided. Commissioning Authority shall not be responsible for any failure of Owner or its consultants, constructors, or contractors, and their respective agents or employees, to comply with the recommendations, written or oral, made by Commissioning Authority.

4.2 AUTHORIZED REPRESENTATIVES Owner's Representative is [\_\_\_\_\_]. Commissioning Authority's Representative is [\_\_\_\_\_]. Each Representative shall have authority to bind its respective Party to all decisions and actions required under this Agreement.

## 5. COMMISSIONING AUTHORITY'S SERVICES & RESPONSIBILITIES Commissioning Authority shall provide Basic Services. Commissioning Authority shall provide Additional Services listed in section 5.3 only with the prior written authorization of Owner.

### 5.1 GENERAL RESPONSIBILITIES

5.1.1. Commissioning Authority will provide Services with respect to the Project as described in Exhibit E. Basic Services consists of the process to determine, through documented verification, whether all building systems identified in Exhibit E are designed and perform according to the basis of design and applicable plans and specifications. The Services shall be planned and integrated systematically and make determinations applicable to progress of Project's design or construction. Services provided during design will verify if the design identified in Exhibit E, at the time of verification, satisfies basis of design's requirements. Services provided during or after construction will verify that the system, equipment or design identified in Exhibit E, at the time of verification, satisfies the applicable plans and specifications' requirements.



5.1.2. Commissioning Authority shall assist Owner or Owner's consultants with filing required documents with governmental authorities having jurisdiction over the Project, if necessary and requested by Owner.

5.1.3. REPORTS Commissioning Authority shall treat such written reports and other documents, including supporting data and field logs, as confidential, and shall distribute copies of them only to Owner and any other party authorized in writing by Owner to receive copies, except Commissioning Authority shall be entitled to distribute them as required by local Laws and to provide documents as otherwise required by Law. Reports and other documents created by Commissioning Authority are prepared solely for the use of Owner, and Owner's consultants, and contractors retained by Owner, for the worksite, and such reports and other documents are not for the benefit of any third party not expressly identified in this Agreement.

5.1.4. When at the worksite, Commissioning Authority shall comply with all job site safety requirements of Owner and Constructor.

5.1.5. Design services furnished by parties other than Owner's design professional, architect, engineer, or other consultants retained by Owner shall comply with all applicable regulatory or governmental requirements, including any licensing criteria. Where required, all design professionals, whether retained by Owner or another party, shall affix their signature and seal on all drawings, specifications, calculations, and submittals prepared by them, and Commissioning Authority shall be entitled to rely upon the adequacy, accuracy, and completeness of such design services.

5.1.6. Upon receipt of payment from Owner, Commissioning Authority shall promptly make payment for labor, services, materials, or equipment furnished in executing the Services.

## 5.2 SERVICES DURING CONSTRUCTION

5.2.1. Construction will commence upon issuance of a written notice from Owner to Constructor to proceed with Constructor's work, with contemporaneous notice to the Commissioning Authority.

5.2.2. Commissioning Authority shall neither be required to evaluate the sufficiency of Constructor's means, methods, techniques, sequences, or procedures, nor be responsible for safety precautions and programs relating to Constructor's work.

5.2.3. Commissioning Authority shall visit the worksite no less than [ ] ([ ]) times, or pursuant to such schedule established in Exhibit D, to become generally familiar with Constructor's work. Commissioning Authority shall not be responsible for ensuring that Constructor's work on the building systems is in accordance with the Construction Documents, but shall, if requested by Owner, make a report to Owner after each worksite visit.

5.2.4. Commissioning Authority shall attend up to [ ] ([ ]) Project meetings with Owner and Constructor.

5.2.5. Commissioning Authority shall assist Owner, Owner's design professionals and Owner's other consultants in conducting up to [ ] ([ ]) inspections to advise Owner regarding if and when Constructor's work on any building systems satisfies the requirements for Substantial Completion, as defined in the Construction Contract or the plans and specifications; and up to [ ] ([ ]) inspections to advise Owner regarding Constructor's Final Completion of its work on such systems.



5.2.6. Commissioning Authority shall make up to [ ] ([ ]) visits to the worksite during Constructor's one-year correction period to assist Owner in evaluating the need for corrective measures.

5.3 ADDITIONAL SERVICES Commissioning Authority shall provide and Owner shall pay Commissioning Authority for the following Additional Services: [ ].

## 6. OWNER'S RESPONSIBILITIES

6.1 WORKSITE INFORMATION Owner shall provide at Owner's expense and in a timely manner the following, upon which Commissioning Authority shall be entitled to rely for its accuracy and completeness: [ ]

6.1.1. information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, data or drawings depicting existing conditions, subsurface and environmental studies, reports, and investigations, all as set forth in Exhibit A;

6.1.2. reports and data obtained from inspections and testing services during construction as required by law or as mutually agreed; and

6.1.3. necessary approvals, site plan review, rezoning, easements and assessments, fees, and charges required for construction, use, occupancy, or renovation of permanent structures, including legal and other required services.

The information required by this section shall be provided in reasonable detail. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent site conditions. Adjacent property descriptions shall include structures, streets, sidewalks, alleys, and other features relevant to Constructor's work. Utility details shall include available services, lines at the worksite, adjacent to the worksite, and connection points. The information shall include public and private information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used in laying out Constructor's work. If portions of the Project design are to be furnished by parties other than Owner's design professionals or other consultants retained by Owner, Owner shall so identify those portions in Exhibit F and shall indicate all performance and design criteria to be satisfied.

6.2 FINANCIAL INFORMATION Upon written request, Owner shall provide Commissioning Authority with evidence of Owner's ability to pay for the Commissioning Authority's Services.

6.3 PROPERTY INSURANCE Owner shall provide Builder's Risk Policy or equivalent insurance coverage which names Commissioning Authority and its consultants as named insureds and shall furnish to Commissioning Authority certificates of insurance evidencing such coverage. Owner and Commissioning Authority waive all rights against each other and Constructor and Constructor's subcontractors for loss or damage to the extent covered by such insurance, except such rights as they may have to the proceeds of such insurance. Each Party shall each require similar waivers from all of their consultants retained for the Project.

6.4 APPROVALS Owner shall provide all approvals required under this Agreement in a timely manner.

6.5 Owner shall provide Commissioning Authority reasonable access to the worksite

## 7. TIME





7.1 TIME FOR SERVICES Commissioning Authority shall provide all Services in a timely manner and in conformance with the most recent Project schedule approved by Owner. Time is of the essence.

7.2 DELAYS If Commissioning Authority is delayed by any cause beyond the control of Commissioning Authority, then Owner shall equitably adjust the Project schedule. Examples of causes beyond the control of Commissioning Authority include, but are not limited to, the following: (a) acts or omissions of Owner or others; (b) changes in the Services or the sequencing of the Services ordered by Owner, or arising from decisions of Owner that impact the time of performance of the Services; (c) encountering Hazardous Waste unanticipated by Commissioning Authority, or concealed or unknown conditions; (d) delay authorized by Owner pending dispute resolution or suspension by Owner; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving Commissioning Authority; (g) general labor disputes impacting the Project or Services but not specifically related to the worksite; (h) fire; (i) Terrorism; (j) epidemics; (k) adverse governmental actions; (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. If delays are encountered for any reason, the Parties agree to take reasonable steps to mitigate the effect of such delays.

7.3 In addition, if Commissioning Authority incurs additional costs as a result of a delay that is caused by items (a) through (d) immediately above, Commissioning Authority shall be entitled to an equitable adjustment in Commissioning Authority's Fee.

8. PAYMENTS Commissioning Authority shall submit to Owner monthly invoices for payment for Basic and Additional Services and Reimbursable Expenses with reasonable supporting detail. Payment shall be due no later than twenty (20) Days from the date of receipt of Commissioning Authority's invoice.

8.1 Prior to final payment, Commissioning Authority shall furnish evidence satisfactory to Owner that there are no claims, obligations, or liens outstanding in connection with its Services. Acceptance of final payment shall constitute a waiver of all claims by Commissioning Authority for compensation for its Services.

8.2 Should there be any claim, obligation, or lien asserted before or after final payment is made that arises from Services, Commissioning Authority shall reimburse Owner for any costs and expenses, including reasonable attorneys' fees, costs, and expenses, incurred by Owner in satisfying, discharging, or defending against any such claim, obligation, or lien, including any action brought or judgment recovered, provided Owner is making payments or has made payments to the Commissioning Authority in accordance with the terms of this Agreement.

8.3 Should Commissioning Authority or its consultants cause damage to the Project, or fail to perform or otherwise be in default under the terms of this Agreement, Owner shall have the right to withhold from any payment due or to become due, or otherwise be reimbursed for, an amount sufficient to protect Owner from any loss that may result. Payment of the amount withheld shall be made when the grounds for the withholding have been removed.

## 9. INDEMNITY

9.1 To the fullest extent permitted by law, Commissioning Authority shall indemnify and hold Owner, Owner's officers, directors, members, consultants, agents, employees directly or indirectly by any of them or anyone for whose acts any of them may be liable, constructor, contractors, subcontractors, design professional (the Indemnitees) harmless from all claims for bodily injury and property damage, except property insured, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of the Services, but only to the extent of the negligent acts or



omissions of the Commissioning Authority, Commissioning Authority's consultants, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Commissioning Authority shall not be required to indemnify or hold harmless the Indemnitees for the negligent acts or omissions of the Indemnitees. Commissioning Authority shall be entitled to reimbursement of any defense costs paid above Commissioning Authority's percentage of liability for the underlying claim.

9.2 To the fullest extent permitted by Law, Owner shall indemnify and hold harmless Commissioning Authority, its officers, directors, members, consultants, agents, subcontractors, or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured, including reasonable attorneys' fees, costs, and expenses, that may arise from the acts or omissions by Owner or others, but only to the extent caused by the negligent acts or omissions of Owner or others. Owner shall be entitled to reimbursement of any defense costs paid above Owner's percentage of liability for the underlying claim to the extent provided for by the subsection above.

9.3 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of Commissioning Authority, anyone directly or indirectly employed by Commissioning Authority, or anyone for whose acts Commissioning Authority may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Commissioning Authority under workers' compensation acts, disability benefit acts, or other employee benefit acts.

10. LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for (a) losses covered by insurance required by this Agreement, or (b) specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below, Owner and Commissioning Authority waive claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver also shall apply to consequential damages due to termination by either Party in accordance with this Agreement. Owner and Commissioning Authority shall require similar waivers in contracts with consultants and others retained for the Project. The following items of damages are excluded from this mutual waiver: [ ].

11. COMMISSIONING AUTHORITY'S INSURANCE Before commencing Services and as a condition of payment, Commissioning Authority shall purchase and maintain insurance coverages, with limits of liability and periods or durations of coverage as set forth in Exhibit C, that will protect Commissioning Authority from claims arising out of its Services under this Agreement, whether the Services are by the Commissioning Authority, or any of the Commissioning Authority's consultants, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Insurance coverage shall include Workers' Compensation and Employers' Liability Insurance; Commercial General Liability, listing Owner and Constructor as additional insureds; Business Automobile Liability Insurance; and Professional Liability Insurance, which shall be either a practice or a project specific policy.

12. TERMINATION Either Party may terminate this Agreement upon seven (7) business days' written notice if the other Party materially breaches its terms through no fault of the initiating Party.

12.1 Upon written notice to the Commissioning Authority, Owner may, without cause, terminate this Agreement. Commissioning Authority shall immediately discontinue Services, follow Owner's instructions regarding termination procedures, and strive to minimize any further costs. In the event of such termination, Commissioning Authority shall be paid for Services performed to date of termination, and any costs arising out of the termination, but only if such costs could not be mitigated by Commissioning Authority.



12.2 Even after termination, the provisions of this Agreement, including provisions relating to indemnification and insurance, still apply to any Services performed, payments made, events occurring, costs charged or incurred, or obligations arising before termination date.

### 13. DISPUTE MITIGATION AND RESOLUTION

13.1 **DIRECT DISCUSSIONS** If a dispute arises out of or relates to this Agreement or its breach, the Parties shall endeavor to settle the dispute. Within five (5) business days, Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions, shall conduct direct discussions and make a good faith effort to resolve such dispute.

13.2 **MEDIATION** Disputes between the Parties not resolved by direct discussions shall be submitted to mediation pursuant to the Construction Industry Mediation Rules of the American Arbitration Association (AAA). The Parties shall select the mediator within fifteen (15) days of the request for mediation. Engaging in mediation is a condition precedent to any form of binding dispute resolution.

13.3 **BINDING DISPUTE PROCESSES** If neither direct discussions nor mediation successfully resolves the dispute, the Parties shall submit the matter to the binding dispute resolution selected below:

**ARBITRATION** Unless the Parties mutually agree otherwise in writing, all claims, disputes, and matters in question arising out of, or relating to, this Agreement shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. An award entered in an arbitration proceeding shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

**LITIGATION** in either the state or federal court having jurisdiction of the matter in the location of the Project.

13.4 **CONTINUANCE OF SERVICES** The Commissioning Authority shall continue to perform Services during any dispute resolution proceedings. If Commissioning Authority continues to perform, Owner shall continue to make payments in accordance with this Agreement for amounts not in dispute.

13.5 **COST OF DISPUTE RESOLUTION** The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

13.6 **VENUE** The venue of any binding dispute resolution procedure shall be the location of the Project, unless the Parties agree on a mutually convenient location.

13.7 Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations.

13.8 An award entered in an arbitration proceeding pursuant to this Agreement shall be final and binding upon the Parties, and judgment may be entered upon an award in any court having jurisdiction.





14. OWNERSHIP OF DOCUMENTS Upon making final payment to the Commissioning Authority, Owner shall receive ownership of the property rights, except copyrights, of all documents, drawings, specifications, electronic data, and information prepared, provided, or procured by Commissioning Authority or its consultants and distributed to Owner. If this Agreement is terminated, the property rights, except copyrights, shall vest with Owner upon payment to Commissioning Authority for all Services performed in accordance with this Agreement, at which time Owner shall be entitled to use, reproduce, and make derivative works of such documents and data to complete the Project. Except for subsequent renovation and remodeling of this Project, Owner shall not use such documents and data without the Commissioning Authority's involvement, nor on other projects, and shall defend, indemnify, and hold harmless Commissioning Authority against all claims, damages, losses, costs, and expenses arising out of such use.

15. ASSIGNMENT AND DELEGATION Except as to the assignment of proceeds, neither Party shall assign its interest in this Agreement without the written consent of the other. Commissioning Authority shall not delegate, assign, or subcontract the performance of Services without the prior written consent of Owner.

16. GOVERNING LAW This Agreement shall be governed by the law in effect at the location of the Project.

17. JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms prior to execution. This Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

18. EXTENT OF AGREEMENT This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, and agreements, either written or oral.

OWNER: [ ]

BY: \_\_\_\_\_ NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

WITNESS: \_\_\_\_\_ NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

COMMISSIONING AUTHORITY: [ ]

BY: \_\_\_\_\_ NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

WITNESS: \_\_\_\_\_ NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

END OF DOCUMENT.

