APPENDIX F

MASTER DEVELOPER AGREEMENT TERMS

In addition to the requirements articulated in the body of the RFP, the Agreement between the University and the Master Developer shall include, but not be limited to, the provisions in this appendix. Other requirements for subsequent agreements will be developed along with the WOSDP during Phase 1 services.

1. Negotiation

After University selection and approval of a Developer, the University and the selected Developer must enter into an agreement satisfactory to the University within Sixty (60) days. If the University and the selected Developer fail to reach agreement within the Sixty (60) day negotiation period, the University shall have the exclusive right to extend the time frame, cancel further negotiations, or begin negotiations with other Developers.

2. General

- Compliance: All agreements will provide for compliance with University academic and student service programs and objectives and for the involvement of the University in the project planning and management (e.g., composition and voting majorities on supervisory or management committees that handle budgeting, and programming, evictions).

- Performance Benchmarks: All contracts and agreements will contain time and performance benchmarks, including construction deadlines, as appropriate, with clear termination provisions.

- Indemnification: The successful selected Developer and its agents, partners, employees and consultants (Indemnitors) shall defend, indemnify and hold harmless the University, the State of Hawa‘i and their officers, employees and agents from and against all liability, loss, damage, liens, causes of action, suits, judgments, cost, and expense, including all attorneys’ fees, and all claims, suits, and demands therefore, arising out of or resulting from the performance of services or any part thereof, the acts or omissions of the Indemnitors, or sub-contractors under any agreement with the University. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of any agreement.

- Insurance: The selected Developer will provide proof of insurance at levels acceptable to the University prior to the signing of any agreement. Other insurance may be required from time to time in such amounts as mutually agreed upon by the University and the selected Developer for coverage against other insurable risks relating to performance.
3. Ground Lease and Financing

If an agreement takes the form of a Ground Lease for the non-campus lands, the following conditions shall apply:

- Financing Approvals: The University will retain approval rights for any financing, refinancing, or additional pledges or encumbrances on the facilities or activities conducted in those facilities.

- Subordination: Neither the University’s fee interest in the lands nor the University’s interest in the Ground Lease shall be subordinated to any financing or other lien or encumbrance that the Developer may obtain in connection with the development and ownership of the Project.

- Term: Financing arrangements shall not exceed the term of the Ground Lease. The University will agree to a lease term on the ground lease appropriate for the proposed use, currently assumed at 30 years. It should be noted that Developers should identify in their Proposal if a longer period will be required to optimize the financing strategy.

- Title: The leasehold improvements shall not be sold or the title transferred without the approval of the University.

- Ground Rent: Ground rent will be based on a fair market value and return on the land, recognizing the existing condition of the land, the cost for off-site infrastructure that the Developer will incur, and the rental rates to be charged for the units.

- Assignment: The Ground Lease will contain a clause prohibiting assignment or sublease of the Developer’s interest without the written total discretionary consent of the University. The foregoing notwithstanding, the Developer will be permitted to give a security interest in the lease to a lender providing construction or long-term financing.

4. Design and Construction

- Assurances: All contracts and agreements will include provisions for liquidated damages, performance bonds, or other remedies to assure timely completion of the Project. Prior to commencement of construction, the Developer must demonstrate that it has the resources in hand or available to complete the project.

- Design Standards: Improvements shall be designed to comply with campus, Board of Regents, and University design standards.

- Off-site and On-Site Costs: All off-site and on-site preparation costs will be at the sole cost and expense of the Developer. Aside from working with the selected Developer to acquire the entitlements, the site is offered (or leased) “as is” in its present condition and subject to applicable governmental laws and regulations.

- Construction Schedule: The Developer must commence work on the project and provide a schedule for completion of the campus by August 30, 2008. The Developer’s
schedule must include both the timing and construction of the campus as well as the timing and construction of all uses within the non-campus lands.