



# PRINCETON UNIVERSITY

Facilities Procurement Office  
E. A. MacMillan Building  
Princeton, New Jersey 08544

## PROFESSIONAL SERVICES BASIC ORDERING AGREEMENT (BOA)

BOA NUMBER FB100####A

WITH

FIRM NAME

FOR

BOA SERVICE

# BASIC ORDERING AGREEMENT NUMBER FB100####A

## BOA SERVICE

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#### **PART II BASIC ORDERING AGREEMENT SCOPE OF SERVICES**

## PART I AGREEMENT

SERVICES	EFFECTIVE TERM OF BASIC ORDERING AGREEMENT
BOA Service	<b>Start Date:</b> Month DD, YYYY <b>End Date:</b> Month DD, YYYY
THE TRUSTEES OF PRINCETON UNIVERSITY	PROFESSIONAL SERVICES CONTRACTOR
<b>Princeton University</b> <b>Facilities Procurement Office</b> <b>E. A. MacMillan Building</b> <b>Princeton, NJ 08544</b>	<b>Firm Name</b> <b>Address, City, State, Zip</b>

This Basic Ordering Agreement (the "BOA") for BOA Service (the "Services") is made and entered into by and between The Trustees of Princeton University (hereinafter "Princeton University"), a New Jersey not-for-profit corporation existing under the laws of the State of New Jersey, with its principal offices in Princeton, New Jersey, and Firm Name (hereinafter "Professional Services Contractor"), organized and existing under the laws of the State or Commonwealth of [State] with its principal offices located at the address shown above.

### WITNESSETH

**WHEREAS**, Princeton University desires that the Professional Services Contractor furnish professional services described in the documents comprising this BOA and in each Release Order (RO) issued under this BOA; and

**WHEREAS**, the Professional Services Contractor represents that it is willing and able to provide these services and that it has the necessary skills and abilities to perform in accordance with the terms and conditions of this BOA;

**NOW THEREFORE**, the parties do mutually agree as follows:

#### ARTICLE I - THE "BASIC ORDERING AGREEMENT"

(a) This BOA is comprised of the following documents (the "BOA Documents"), including all modifications thereof:

**Part I – Agreement**

**Part II –BOA Scope of Services Documents**

(b) The BOA Documents are complementary and are intended to include and imply all items required for the proper execution of Release Orders (RO) under this BOA. However, in the event of any conflict between or among the BOA Documents, the documents shall control in the order listed above.

(c) Unless specifically included as a part of the BOA Documents, any and all prior negotiations and writings of every kind concerning this BOA or the Services described herein are superseded and supplanted by this BOA. Any changes to the provisions of this BOA, including changes to the BOA Documents and exercise of optional periods, made following the execution of this BOA shall be made only by written Amendment to the BOA.

**ARTICLE II – DEFINITIONS**

The following are general definitions of terms that are applicable to this BOA:

- (a) The term “**Architect**” refers to Princeton University or an individual or firm retained by Princeton University who is responsible for generating designs and/or specifications for construction projects. As used in this BOA, the word “Architect” also includes structural, mechanical, electrical, or other engineers and subconsultants normally and customarily retained by an Architect or Princeton University to design the elements and observe the construction of a building structure or system.
- (b) A “**Basic Ordering Agreement**” or “**BOA**” is defined as a basic agreement on terms, conditions, and pricing that is issued to facilitate the expeditious processing of individual Release Orders for Services within the scope established for the BOA. A BOA is not a binding contract and does not state or imply any agreement by Princeton University to place future Release Orders, does not require or obligate Princeton University to issue any minimum number or value of Release Orders, and does not guarantee any minimum or maximum amount of Services or expenditure under the BOA. There is no funding obligated by this BOA and no claims for payment may be made by the Professional Services Contractor directly against the BOA. Issuance of Release Orders to obtain the Professional Services Contractor's services hereunder is wholly within the discretion of Princeton University and nothing herein shall be construed to require Princeton University to use these services for any purpose or to limit Princeton University's use of its own employees or other Professional Services Contractors to perform similar Services at Princeton University.
- (c) The term “**Release Order**” or “**RO**” means an individual order for Services issued by Princeton University pursuant to the terms, conditions, and pricing established in a BOA. Each individual Release Order is a binding contractual instrument and will reference and incorporate the terms and conditions of this BOA and specify the scope of work, delivery schedule, fixed or not-to-exceed price, and funding encumbrance for the individual Release Order.
- (d) The term “**Basic Services**” means those services as more fully described in an individual RO, that the Professional Services Contractor shall perform within the NTE Price.
- (e) The term “**Cure Period**” means the ten (10) day period during which either party may cure deficiencies in performance under the BOA Article entitled “Termination”.
- (f) The term “**Hourly Compensation**” means the hourly compensation for the performance of Basic Services by the Professional Services Contractor. The Hourly Compensation does not include compensation for Reimbursable Expenses.
- (g) The term “**Key Personnel**” means the essential personnel of the Professional Services Contractor as more fully described in the BOA Article entitled “Key Personnel and Subconsultants”.
- (h) The term “**NTE Price**” means the maximum compensation to the Professional Services Contractor for Basic Services. The acronym NTE stands for “not-to-exceed”.
- (i) The term “**Princeton University**” means The Trustees of Princeton University, the owner of the Services, acting through its Princeton University Representatives.
- (j) The term “**Princeton University Representative**” means the representatives of Princeton University authorized to bind Princeton University under the BOA.
- (k) The term “**Professional Services Contractor**” includes architects, engineers, and other subconsultants who are licensed or otherwise certified to perform the specialized services under this BOA

and also includes subconsultants or other individuals in the employ of or engaged by the Professional Services Contractor for the performance of its Services under this BOA.

(l) The term “**Reimbursable Expenses**” means those permitted expenses incurred by the Professional Services Contractor in the performance of Basic Services as more fully described in the BOA Article entitled “Compensation to Professional Services Contractor”.

(m) The term “**Reimbursable Expense NTE Amount**” means the not-to-exceed limit on the Professional Services Contractor’s compensation for Reimbursable Expenses incurred in the performance of Basic Services under the BOA.

(n) The term “**Services**” means all services to be performed by or on behalf of the Professional Services Contractor pursuant to this BOA, including services performed by the Professional Services Contractor and by any subconsultants engaged by the Professional Services Contractor.

### ARTICLE III – BASIC ORDERING AGREEMENT OPERATION

(a) Services under this BOA may be ordered by Princeton University from time to time during the term of the BOA via the issuance of written Release Orders. Release Orders are individual contractual instruments that will be issued unilaterally by Princeton University and will be binding on the Professional Services Contractor either upon signed acceptance of the order or upon commencement of Services by the Professional Services Contractor, whichever occurs first. Princeton University and the Professional Services Contractor shall treat each Release Order as a separate and distinct contract for purposes of contract administration, cost estimating, cost accumulation, billing and payment.

(b) The value of individual Release Orders issued under this BOA shall not exceed **\$75,000.00** without the prior written approval of Princeton University’s Administrative Representative. The Professional Services Contractor shall not proceed with Services on any projects/jobs estimated to exceed this maximum limit unless authorized in writing to do so by the Princeton University Administrative Representative.

(c) All Services to be performed by the Professional Services Contractor will be ordered only through the issuance of written Release Orders. Oral orders shall not be binding on Princeton University. Written Release Orders will be in the form and format currently in use by Princeton University at the time of issuance, will be uniquely numbered, will incorporate the terms and conditions of this BOA by reference, and will contain, at a minimum, the following:

- (1) Identification of the Project and a description of the Services to be performed
- (2) Required Completion (Delivery) Date for the Services and/or Project
- (3) Fixed or NTE Price agreed to by the Parties
- (4) Obligation of funds

(d) Each Release Order referencing this BOA shall be subject to the provisions of this BOA and shall be construed as automatically incorporating the terms and conditions of this BOA. Although a Release Order may include modifications to terms and conditions applicable only to that particular Release Order, Release Orders are not to be considered as modifications or amendments to this BOA. Separate BOA Amendments will be issued to modify the terms and conditions set forth herein when necessary. A Release Order may be modified by mutual agreement of the Parties. Any change to a Release Order shall be in the form of a written Amendment or Change Order issued for that Release Order.

(e) The Professional Services Contractor should not initiate any Services prior to receipt of a written Release Order from Princeton University. Upon issuance of a Release Order, the Princeton University

Technical Representative designated for the order will coordinate, schedule, facilitate, and oversee any Services to be performed onsite at Princeton University. This does not preclude advance consultation between the Princeton University Technical Representative and the Professional Services Contractor for purposes of defining a scope of work for a particular project or obtaining cost estimates.

(f) **Pricing Arrangements.** Individual Release Orders will identify the type of pricing arrangement that will apply. This BOA provides for issuance of Release Orders based on the pricing arrangements described below:

(1) **Time-and-Material (T&M).** This type of Release Order will provide for establishment of a NTE Ceiling Price to complete the services based on an advance estimate provided by the Professional Services Contractor. The Professional Services Contractor will then be reimbursed for actual costs up to this NTE Ceiling Price for labor at the applicable hourly rates established in this BOA at the time of issuance of the Release Order and for any material, subcontracts, and special equipment plus applicable mark-ups as established in this BOA.

(2) **Fixed Price (FP).** This type of Release Order will provide for establishment of a lump sum fixed price or fixed fee to complete the project based on either unit prices established in this BOA or on an advance price quote provided by the Professional Services Contractor. Upon satisfactory completion of the services, the Professional Services Contractor will be paid the fixed amount established in the Release Order.

(g) **Establishment of Price.** Prior to the issuance of a Release Order for Services under this BOA, the Princeton University Technical Representative will contact the Professional Services Contractor to discuss the project scope and requirements and may provide the Professional Services Contractor with a statement of work, drawings, or other specifications. The Professional Services Contractor will prepare and submit a cost estimate to complete the services that will include the following minimum information:

(1) A brief description of the Services to be performed by the Professional Services Contractor including any Services that will be subcontracted and any special equipment that will be required.

(2) Schedule including expected start and completion dates.

(3) Estimated costs for direct labor consistent with the rates set forth in this BOA. The estimate shall name the individuals or identify the generic labor categories, numbers of personnel in each category, and the man-hours for each labor category that will provide services.

(4) Estimated costs for any subconsultants or subcontractors to be retained by the Professional Services Contractor plus any applicable mark-up at the rates set forth in this BOA.

(5) Estimate of any reimbursable miscellaneous expenses to perform the services.

(6) Identification of any allowances, qualifications, exclusions or other conditions included in the estimate.

(h) The Princeton University Technical Representative will review and verify that the scope of work and costs included in the estimate are technically acceptable and will provide a recommendation to the Administrative Representative as to the type of pricing arrangement that should be used for the resulting Release Order and the Princeton University Administrative Representative will issue the Release Order accordingly.

(i) **Services Schedules.** Schedules for individual Release Orders will be established by the Professional Services Contractor in conjunction with the Princeton University Technical Representative.

**ARTICLE IV - DESIGNATED REPRESENTATIVES**

(a) The Professional Services Contractor's designated representatives are:

<b>Name Professional Services Contractor's Technical Rep</b>	-	<b>Technical Representative</b>
<b>Name Professional Services Contractor's Admin Rep</b>	-	<b>Administrative Representative</b>

(b) Princeton University's designated project and administrative representatives (individually and collectively herein "Princeton University Representatives") are:

<b>Designated on each RO</b>	-	<b>Project Manager (Technical Representative)</b>
<b>Princeton Contract Administrator Name</b>	-	<b>BOA Administrator (Administrative Representative)</b>

(c) Agreements made and/or actions taken by the Professional Services Contractor, which by their nature effect a change to this BOA or to any Release Order issued hereunder, shall only be binding upon Princeton University when such agreement or action is specifically authorized in writing in advance by a Princeton University Representative. Therefore, any Services or change undertaken by the Professional Services Contractor at the direction of anyone other than a Princeton University Representative, or without the prior written authorization of a Princeton University Representative, is at the Professional Services Contractor's own risk.

**ARTICLE V – KEY PERSONNEL AND SUBCONSULTANTS**

(a) **Professional Services Contractor's Key Personnel.** Key Personnel are individuals either employed directly by the Professional Services Contractor or engaged by them as subconsultants who are considered to be essential to the performance of Services under an individual RO. Any and all Key Personnel shall be specified by name and job title in the RO.

(b) **Change in Key Personnel.** Prior to reassigning any specified Key Personnel, the Professional Services Contractor shall notify Princeton University reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the services or project identified in the RO. Individual ROs may be amended from time to time to either add or delete Key Personnel, as appropriate. Any change to the Key Personnel is subject to Princeton University's prior written approval, which shall not be unreasonably withheld, and any such change made without the prior written approval of Princeton University may be considered a material breach of the BOA.

(c) **Subconsultants.** Any subconsultants to be engaged by the Professional Services Contractor to perform the Services shall be specified by name and specialization in the individual RO.

(d) **Substitution of Subconsultants.** No substitution of subconsultants from those listed in the RO, no alteration of the area of work for particular subconsultants identified in the RO, and no use of additional subconsultants shall be made without prior written approval of Princeton University, which shall not be unreasonably withheld. Requests for approval must include a clear description of the work to be performed, the capability of the proposed subconsultant and the method of payment.

(e) **Termination of Subconsultant Agreements.** Princeton University reserves the right to require the Professional Services Contractor to terminate contracts or agreements with any retained subconsultants by for performance of services under an individual RO. Any compensation for which Princeton University may be liable as a result of such termination shall be limited to amounts as described in the BOA Article entitled "Termination". In the event of any termination of any subconsultant contracts or agreements by Professional Services Contractor, whether or not required by Princeton University, Professional Services Contractor will ensure prompt delivery of all records, documents, working papers, calculations, computer programs, data, drawings, plans, specifications and other work product, and all equipment, materials,



items or objects acquired by the subconsultant and reimbursed by Professional Services Contractor and/or Princeton University pertaining to services performed under the RO up to the point of termination.

#### ARTICLE VI - PRINCETON UNIVERSITY'S RESPONSIBILITIES

- (a) **Release Order Requirements.** Prior to the issuance of an individual RO, Princeton University will provide the Professional Services Contractor with a description of the project that sets forth a description of Princeton University's design objectives, constraints, and criteria and specifies the space requirements and relationships, flexibility and expandability, special equipment and systems, and site requirements. Throughout the term of the RO, Princeton University shall consult with the Professional Services Contractor and provide in a timely manner such additional information as may be reasonably necessary for the Professional Services Contractor to perform its Services under the RO.
- (b) **Review and Approval of Documents.** Princeton University's Representatives shall examine any documents submitted by the Professional Services Contractor and shall promptly render any decisions that pertain thereto so as to avoid unreasonable delay in the progress of the Services.
- (c) **Existing Conditions Documents.** Princeton University will provide access to or copies of all available drawings and other documents related to the required Services.
- (d) **Surveys and Investigations.** Princeton University will provide any surveys, geo-technical, structural, mechanical, chemical, air and water tests for hazardous materials, and other laboratory and environmental tests, inspections, and reports as required by law. The Professional Services Contractor shall inform Princeton University of all surveys, investigations, inspections, or tests (collectively "investigations") that should be performed for the proper design and construction of a project, but that are not within the scope of the Services under the individual RO. The Professional Services Contractor shall render advice as to when such investigations should be performed to avoid any delay to the completion of a project and shall assist Princeton University in preparing all information and instructions needed to enable Princeton University to solicit proposals for any such investigations and to engage appropriate subconsultants to perform such investigations. The Professional Services Contractor shall review the results of all investigations applicable to their Services and take these into account appropriately.
- (e) **Notice of Defects.** Notice shall be given by Princeton University to the Professional Services Contractor and by the Professional Services Contractor to Princeton University if either party becomes aware of any fault or defect in a project or nonconformance with the RO documents.

#### ARTICLE VII – PROFESSIONAL SERVICES CONTRACTOR'S RESPONSIBILITIES

- (a) **Basic Services.** Basic Services of the Professional Services Contractor shall include the services of all professional and technical disciplines needed to perform the services described in this Article. Princeton University will order such Services via the issuance of individual Release Orders under and in accordance with this BOA. These services are to be provided unless specifically excluded in an individual RO. All services shall be performed according to generally accepted standards of professional practice.
- (b) **Project Administration Services.** The Professional Services Contractor shall provide all project administration services necessary to facilitate the orderly progress of a project including, but not limited to, attending project meetings, communicating with others as appropriate, monitoring progress and issuing progress reports to Princeton University, supervising Professional Services Contractor's in-house personnel, and coordinating and managing information flow and decision-making.
- (c) **Coordinated Services.** The Professional Services Contractor acknowledges that it is essential that all Services be coordinated, including services provided by Princeton University. The Professional Services



Contractor shall coordinate the services of its architects, engineers, and other subconsultants and subcontractors. The Professional Services Contractor shall review and check all drawings and specifications prepared by architects, engineers, and other subconsultants or subcontractors, and shall make modifications as necessary, to assure that they are integrated into a coordinated and complete set of documents prior to each submission. In addition, the Professional Services Contractor shall coordinate its Services with services provided by Princeton University and/or other firms engaged by Princeton University to perform services on the project.

(d) **Princeton University-Furnished Information.** The Professional Services Contractor shall identify information or documents required to be provided by Princeton University for the Services, and if necessary, shall gather available documents from Princeton University's identified record storage location. The Professional Services Contractor shall assemble, review, and coordinate data furnished by Princeton University.

(e) **Design Criteria, Laws, Codes, and Regulations.** The Professional Services Contractor shall identify and research all design criteria, laws, codes, regulations and ordinances applicable to the Services being provided for the project and shall perform its Services in compliance therewith. If appropriate, and with Princeton University's approval, the Professional Services Contractor and/or its subconsultants shall review a project with authorities having jurisdiction. The Professional Services Contractor shall prepare any necessary written or graphic explanatory materials and appear at agency meetings. All such visits shall be made with Princeton University's Representative. If required for a project and authorized by Princeton University, the Professional Services Contractor shall prepare necessary code variance applications.

(f) **Princeton University Design Standards.** Any design services provided under individual RO's shall comply with the then current release of the Princeton University Facilities Design Standards Manual (the "Design Standards"). If the Professional Services Contractor judges an aspect of the Design Standards to be in conflict with a Project requirement, or to be otherwise detrimental to the Project, the Professional Services Contractor shall so notify, and abide by written direction from, the Princeton University Representative. If the Professional Services Contractor deviates from the Design Standards without specific written authorization from Princeton University to do so, Princeton University may instruct the Professional Services Contractor to modify any design documents as necessary, without additional compensation, to comply with the Design Standards. In the event that any aspect of the Project is constructed in a manner which deviates from the Design Standards without specific written authorization from Princeton University, in addition to any other rights or remedies which may be available pursuant to the terms of this BOA or by operation of law, Princeton University specifically reserves the right to claim an error or omission on the part of the Professional Services Contractor in that regard and seek indemnification therefore.

(g) **Design Documents.** When design services are required under individual RO's, the Professional Services Contractor shall submit design documents to Princeton University for purposes of evaluation and approval by Princeton University. Subject to the provisions contained in the next sentence hereof, the Professional Services Contractor shall be entitled to rely on approvals received from Princeton University in the further development of the design. Princeton University's approval of the Professional Services Contractor's design documents contemplated herein and in other portions of this BOA shall not be for the purpose of determining the accuracy, adequacy, or completeness of such documents, and shall not alter the Professional Services Contractor's responsibilities with respect to such documents.

(h) **Meetings.** The Professional Services Contractor shall schedule all meetings with Princeton University through the Princeton University's Project Manager. The Professional Services Contractor shall prepare an agenda for and minutes of all meetings attended by the Professional Services Contractor. The

Professional Services Contractor shall distribute the minutes within one week of the documented meeting.

(i) **No Conflict of Interest.** Except with Princeton University’s knowledge and consent, the Professional Services Contractor shall not engage in any activity, or accept any employment, interest, or contribution that would reasonably appear to compromise the Professional Services Contractor’s professional judgment with respect to Services provided under this BOA.

(j) **Confidential Information.** The Professional Services Contractor shall maintain the confidentiality of information specifically designated as confidential by Princeton University, unless withholding such information would violate applicable law, create the risk of significant harm to the public or prevent the Professional Services Contractor from establishing a claim or defense in an adjudicatory proceeding.

(k) **Building Access.** The Professional Services Contractor shall be responsible for the sign out, distribution, safe use and return of all building keys and/or access cards, and shall be responsible for all costs associated with failure to return these items (e.g., the cost to re-key/re-implement the system).

**ARTICLE VIII – TERM OF BASIC ORDERING AGREEMENT**

(a) The effective term of this BOA shall be for three (3) years starting **Month DD, YYYY** and ending **Month DD, YYYY**.

(b) The Parties may agree to extend the effective term of this BOA for up to one year beyond the BOA Expiration Date. Extensions to the BOA term and any associated rate changes shall be incorporated by an Amendment to the BOA. .

(c) Release Orders issued pursuant to this BOA may be issued during the effective term of the BOA. Release Orders issued within the effective term of the BOA may include periods of performance which extend beyond the expiration date of the BOA. The BOA shall remain open and in effect until all open Release Orders are completed and closed.

**ARTICLE IX -- COMPENSATION TO PROFESSIONAL SERVICES CONTRACTOR**

(a) **Basic Services Compensation.** In consideration for the Professional Services Contractor’s performance of Services pursuant to Release Orders issued under this BOA, Princeton University will compensate the Professional Services Contractor in accordance with the rates and other limits and guidelines set forth in this BOA. The Professional Services Contractor shall utilize the rates and other pricing information set forth below when preparing estimates/quotes for Services and when billing for Services performed pursuant to Release Orders issued under this BOA.

(1) **Hourly Rates.** Princeton University will compensate the Professional Services Contractor for direct services provided by the named individuals or generic labor categories at the hourly rates set forth below. The Hourly Rates set forth below are “fully burdened”, i.e. inclusive of all costs for labor, overhead, and profit associated with providing an hour of Services by the individual/labor category during the applicable period.

**HOURLY RATES**

**BOA Year #1: Month DD, YYYY to Month DD, YYYY**

Individual/Labor Category	Hourly Rate

**BOA Year #2: Month DD, YYYY to Month DD, YYYY**

Individual/Labor Category	Hourly Rate

**BOA Year #3: Month DD, YYYY to Month DD, YYYY**

Individual/Labor Category	Hourly Rate

(2) **Subconsultant/Subcontractor Reimbursement.** Princeton University will reimburse the Professional Services Contractor for actual costs incurred for their subconsultants or subcontractors plus the applicable Subconsultant/Subcontractor Mark-Up set forth below. Mark-up is intended to reimburse the Professional Services Contractor for administration and other indirect costs associated with acquiring subcontracted Services that are typically allocated to direct costs for these services in accordance with the Professional Services Contractor's usual accounting procedures. Profit shall not be included as a part of Mark-up Rates.

**Subconsultant/Subcontractor Mark-Up TBD%**

(3) **Reimbursable Expenses.** Expenses incurred by the Professional Services Contractor or any of its subconsultants or subcontractors will be reimbursed at cost with **no mark-up allowed** up to the not to exceed (NTE) amount established in individual RO's and in accordance with the limits and guidelines set forth in paragraph (b) below.

(b) **Reimbursable Expenses.** The Professional Services Contractor will be reimbursed for actual expenses in accordance with the guidelines listed below. These guidelines shall apply to all expenses incurred specifically for the project for which reimbursement is sought under a RO whether incurred directly by the Professional Services Contractor or its subconsultants. Only direct costs that are wholly attributable to the project shall be allowed. Indirect, prorated, proportional or other shared or estimated expenses shall not be allowed as reimbursable expenses. Deviations from these guidelines shall be allowable only with prior written approval from Princeton University.

(1) Expenses for transportation and living when traveling in connection with the project as approved by Princeton University are allowable subject to the following constraints:

- (i) Transportation and living expenses for travel within a forty (40) mile radius of Princeton University shall not be allowable.
- (ii) "First Class" expenses shall not be allowable. Examples of "First Class" expenses include limousines, chauffeured cars, luxury car rentals, private jets, first class airfare, business class airfare on domestic flights, and any other form of luxury travel. Expenses for the following forms of transportation are considered allowable: public transportation, economy/standard car rental, coach/economy airfare, business class airfare on international flights, and other reasonable forms of transportation.

- (iii) Mileage reimbursement for use of personal vehicles shall be allowable at the standard mileage rate for business set by the IRS at the time of travel.
  - (iv) Allowable points of travel shall be between Princeton University and the Professional Services Contractor's office location(s). If Princeton University is the first or last stop of the day, travel between the University and an employee's home shall be allowable. Travel to Consultants' office locations on behalf of Princeton University shall be allowable when this project is clearly identified as the sole purpose of the meeting. An agenda for the meeting shall be submitted with the invoice for reimbursement. Travel between an employee's home and normal office location shall not be allowable.
  - (v) Meals. Those meals purchased while travelling to or working at Princeton University during normal business hours (typically lunch) shall be allowable. Meals, beverages, or snacks purchased in the Professional Services Contractor's home city while not travelling to or from Princeton University shall not be allowable. Reimbursement for alcoholic beverages is not permitted.
  - (vi) Hotels. When required, accommodations at the standard single room rate shall be allowable. In-room charges such as movies, mini-bar, water, and snacks shall not be allowable.
- (2) Expenses for production or reproduction of drawings, specifications, calculations, cost estimates, program analyses, photographs, renderings, plottings, shop drawings, or similar instruments required as described in Articles VI and VII.
- (3) Expenses for printing or copying Construction Documents in quantities suitable for bidding provided the cost is obtained by competitive pricing of outside services.
- (4) Expenses for postage, parcel delivery services (UPS or similar carriers), long distance telephone calls, facsimile (fax) transmissions, special deliveries, and couriers or other hired delivery services.
- (5) Expenses for fees paid for securing approval of governmental review agencies and authorities if approved in advance by Princeton University. Reproduction expenses for the initial sets of drawings, specifications, calculations and reports for submittal to such agencies (i.e., the Division of Community Affairs, designated plan checking firm, etc.) for plan checking shall be reimbursable.
- (c) **Notification Requirement.** If at any time the Professional Services Contractor has reason to believe that the expenses to be incurred in performing the RO in the next succeeding thirty (30) days, if added to all other payments and costs previously accrued, will exceed eighty-five percent (85%) of the NTE Price, the Professional Services Contractor shall notify Princeton University giving a revised estimate of total expenses along with supporting reasons and documentation.

#### ARTICLE X – INVOICES AND PAYMENTS

- (a) Professional Services Contractor shall prepare and submit separate monthly invoices for individual Release Orders issued under this BOA. For Release Orders with project schedules that do not exceed one month, the Professional Services Contractor shall submit one single invoice for payment upon completion of all Services on the project/job. Invoices shall be typed or computer-generated and include the following minimum information: BOA Number **FB100####A**; the applicable Release Order Number (aka *FPO Contract Number*); Professional Services Contractor's company/business name; a sequential

invoice number or other unique invoice identifier; the invoice amount; and the invoice date. Invoice documents together with any required supporting documentation shall be scanned or converted into a single PDF file. Contractor shall electronically submit the invoice to Princeton University by uploading the PDF file through the FPO Contract Payment Request Portal website located at: <https://facnet.princeton.edu/invoice/>.

(b) Invoices shall include amounts for Basic Services Compensation per Article IX(a) in accordance with the following:

(1) **Hourly Expenses.** Monthly invoices shall include details supporting the hourly expenses being billed for services performed during the billing month. Supporting details shall include at a minimum: names of the individuals and/or labor categories, the number of hours worked by each, and the applicable hourly rates. Billing shall be in accordance with the Hourly Rate Schedule set forth in this BOA.

(2) **Subconsultant Expenses.** Professional Services Contractor shall include actual amounts billed to them by subconsultants during the billing month and shall submit copies of the subconsultant invoices to substantiate the amounts included on the invoice to Princeton University.

(3) **Reimbursable Expenses.** Professional Services Contractor shall include actual amounts incurred during the billing month for reimbursable expenses and shall submit receipts, expense reports, and other documentation to substantiate each item of allowable reimbursable expense included on the invoice.

(c) In no event shall amounts in excess of the Hourly Expenses NTE Amount, the subconsultant NTE Amount or the Reimbursable Expenses NTE Amount established on an RO be paid by Princeton University.

(d) Payments will be made to the Professional Services Contractor within 30 days after receipt by the Princeton University Contract Administrator of each invoice that is submitted in proper form and substance. Release of payments will be conditioned upon review and approval of the invoice by Princeton University's Administrative and Technical Representatives designated for the RO.

(e) Prior to final payment to the Professional Services Contractor, the Professional Services Contractor shall furnish evidence satisfactory to Princeton University 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 the Professional Services Contractor for compensation for its Services.

(f) **Records.** The Professional Services Contractor shall maintain records for all reimbursable expenses and for services performed on an hourly basis in accordance with generally accepted accounting principles. Records shall be made available to Princeton University or its authorized representative as required by this BOA or upon request at mutually convenient times. The Professional Services Contractor shall retain all records relating to this BOA until the expiration of seven (7) years after final payment is made under this BOA, or six (6) months after final resolution (by non-appealable judgment or settlement) of any disputes, whichever may be later.

(g) The Professional Services Contractor shall permit Princeton University, at its own expense, by its duly authorized representatives, to inspect and audit all data, records and files pertaining to this BOA.

ARTICLE XI – RESERVED

ARTICLE XII - INSURANCE AND INDEMNIFICATION

(a) **Insurance.** Upon execution of this BOA and prior to beginning work under a Release Order the Professional Services Contractor shall establish, maintain and keep in force policies for minimum insurance coverage as set forth below:

- (1) **Worker’s Compensation (WC)** ..... Statutory Minimum\*
- (2) **Employer’s Liability (EL)** ..... \$500,000 Minimum\*

**\*WC and EL are not required if Professional Services Contractor is a solo independent contractor.**

(3) **General Liability (GL):** Commercial General Liability including Contractual, Premises Operations, Products and Completed Operations, Independent Contractors/Vendors and Personal Injury, Bodily Injury and Property Damage.

- Each Occurrence ..... \$2,000,000 Minimum
- Aggregate..... \$2,000,000 Minimum

(4) **Automobile Liability (AL):** Automobile Liability insurance is required only when use of a vehicle is integral to the performance of the services or project.

- Bodily Injury and Property Damage..... \$1,000,000 Minimum

(5) **Professional Liability (PL):** Professional Services Contractors who are required to maintain professional licenses in order to practice in their profession shall maintain Professional Liability Insurance coverage as follows:

- Per Claim ..... \$2,000,000 Minimum
- General Aggregate ..... \$2,000,000 Minimum

By requiring such minimum insurance, Princeton University shall not be deemed or construed to have assessed the risk that may be applicable to the Professional Services Contractor for a Project or under this BOA. The Professional Services Contractor shall assess its own risks and if deemed to be appropriate and/or prudent, should maintain higher limits and/or broader coverage than that stipulated above. The Professional Services Contractor is not relieved of any liability or other obligations assumed or pursuant to the BOA by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

(b) Insurance shall be provided at the Professional Services Contractor’s expense as part of the Hourly Expenses NTE Amount for Basic Services and shall not be charged directly to Princeton University as a Reimbursable Expense.

(c) Insurance policies required by this clause shall be written by a Carrier licensed to do business in the State of New Jersey with a Financial Strength Rating (FSR) of at least “A” and a Financial Size Category (FSC) of at least “VIII” in *A.M. Best’s Key Rating Guide*.

(d) For all General and Excess Liability insurance policies, the Professional Services Contractor shall name “The Trustees of Princeton University, its Officers, Employees and Agents,” as additional insureds in the insurance policies specified in paragraph (a) with respect to any liability resulting from or in any way connected with any activity provided for under this BOA, and said insurance coverage shall be primary as to any other valid and collectible insurance of Princeton University.



(e) The minimum insurance coverage shall be maintained for the entire duration of the Project. In the case of Professional Liability, coverage shall continue for a period of three (3) years after Substantial Completion of the Project. The Princeton University Contract Administrator shall be notified by the Professional Services Contractor or its Insurance Carrier at least 30 days prior to any material change to or cancellation of any of insurance coverage.

(f) Upon execution of this BOA and prior to beginning work under a Release Order, the Professional Services Contractor or its Broker/Insurance Carrier shall provide a Certificate(s) of Insurance (COI) evidencing compliance with all requirements for insurance coverage including the Additional Insured endorsement as indicated in this Article. The COI shall be submitted to the Princeton University Contract Administrator at the address shown on page 1 of this Agreement for review and approval. For the duration of the BOA, the Professional Services Contractor or its Insurance Carrier shall provide updated COI's to evidence renewals or other changes to insurance policies or coverage. At the point of substantial completion of the Project, a COI shall be provided that evidences that the required Professional Liability "tail" coverage is in place and will remain in effect for a minimum of three (3) years following Project completion.

(g) **Indemnification -**

(1) To the fullest extent permitted by the laws of the State of New Jersey, and subject to subparagraph (2) below, the Professional Services Contractor (the "Indemnitor") agrees to indemnify and hold harmless, and pay for the defense of Princeton University, its trustees, officers and employees, and any affiliated or related entities (the "Indemnitees") against all claims, loss, liability, damage, costs and expenses, including reasonable attorney's fees, that are alleged to have occurred in whole or in part as a result of the negligent acts or omissions of the Indemnitor, its agents, consultants, employees, or representatives.

(2) **Equitable Adjustment.** In the event that acts, representations or omissions of an Indemnitee *materially* contributed to the nature or manner of performance or nonperformance by the Indemnitor, or its agents, subconsultants, employees, or representatives or nonperformance which gives rise to Indemnitor's liability under subparagraph (1) above, the indemnity obligation shall be equitably adjusted to reflect said material contribution, with the Indemnitor retaining proportional liability for indemnification consistent with that equitable adjustment., **except** that Indemnitor may not avail itself of rights under this subparagraph (2) until it has provided the Indemnitees with reasonably timely notice, via a written statement, of Indemnitor's good faith factual basis for equitable adjustment, and proposed an adjustment based upon percentages, liability limits, or any other method of allocation that is appropriate under the circumstances.

(h) **Survival.** This indemnification obligation shall survive termination of this Agreement.

### ARTICLE XIII – OWNERSHIP AND USE OF DOCUMENTS

(a) **Authorship and Copyright; Perpetual License to Use.** The original design documents, including drawings, specifications and other documents prepared by the Professional Services Contractor for these Services are instruments of the Professional Services Contractor's service. Unless otherwise provided, the Professional Services Contractor shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including copyright; provided, however, the Professional Services Contractor agrees to and does hereby grant Princeton University a perpetual royalty-free license to all such documents in which it may claim a copyright and to all architectural work as to which it may assert any rights or establish any claim under the design patent or copyright laws. Princeton University's perpetual royalty-free license shall entitle it to unlimited rights in all architectural works



arising out of the Professional Services Contractor's performance of services pursuant to this Contract, so long as its use thereof is consistent with Princeton University's purpose, as set forth in its Charter. This perpetual royalty-free license shall include, but not be limited to, drawings, specifications, architectural designs of buildings and structures, notes and other architectural and engineering documents produced by or on behalf of Professional Services Contractor in the performance of this BOA, or in contemplation thereof, archive drawings and archive specifications produced after completion (including the right to use same for comprehensive campus-wide mapping endeavors), and any and all other "architectural works" as that term is defined in the Architectural Works Copyright Protection Act at 17 U.S.C. 102(a)(8). Princeton University shall defend, indemnify and hold the Professional Services Contractor harmless from and against all claims, losses, liabilities and damages arising out of Princeton University's use of documents pursuant to this perpetual royalty-free license for any purpose other than in connection with the Services which is the subject of this BOA.

(b) At any time upon demand by Princeton University, Professional Services Contractor shall furnish to Princeton University as a Reimbursable Expense a complete set of all work products prepared by or obtained by the Professional Services Contractor to date of such demand. In the event of Professional Services Contractor's failure to comply with Princeton University's demand hereunder, the parties agree that any remedy at law would be inadequate and entitle Princeton University to equitable relief including without limitation the remedy of specific performance.

(c) In the event that the BOA is terminated for Professional Services Contractor's default pursuant to Article XV hereof, Professional Services Contractor shall remain responsible for all signed and sealed construction documents prepared by Professional Services Contractor or its subconsultants, except to the extent that such documents are modified, misused or misinterpreted by Princeton University, or its contractors, or any replacement architect. In all other cases, reuse of the Professional Services Contractor's design documents without written authorization by Professional Services Contractor shall be at Princeton University's risk.

(d) The Professional Services Contractor shall be permitted to reuse individual elements of the design resulting from these Services on other projects; provided, however, that the Professional Services Contractor shall not substantially reproduce the design resulting from these Services on any other project without Princeton University's prior written approval.

(e) Notwithstanding paragraph (a), renderings, presentation models, and mock-ups shall become property of Princeton University.

#### **ARTICLE XIV - RESERVED**

#### **ARTICLE XV-- TERMINATION**

(a) **Termination for Default.**

(1) **Grounds.** If the Professional Services Contractor fails to perform any of its material duties under the BOA or an RO issued under the BOA, in a timely fashion, for reasons not due to the fault of Princeton University, Contractor or any subcontractor, or otherwise materially breaches the BOA or RO in any way, Princeton University may terminate the BOA or RO for default. Without limitation, termination for default will be permitted if the Professional Services Contractor fails to make prompt payment to Subconsultants; fails to promptly correct any errors, omissions or other deficiencies in documents prepared by Professional Services Contractor upon receiving notice of them from Princeton University or otherwise becoming aware of them; fails to adhere to agreed schedules or to perform in a timely fashion; fails to continue its performance during the pendency of a dispute, as required by the BOA; becomes insolvent, makes an assignment for the benefit of

creditors, files a voluntary petition in bankruptcy or insolvency or has an involuntary petition in bankruptcy or insolvency filed against it, or has a receiver appointed; files for dissolution or otherwise is dissolved; or if Princeton University shall have reasonable grounds to believe that Professional Services Contractor does not have the technical or financial ability to complete its obligations under the BOA or RO and Professional Services Contractor fails to give Princeton University prompt and reasonable assurances of its ability to perform.

(2) **Notice and Effective Date.** Princeton University shall notify Professional Services Contractor, in writing, of a termination for default, and the reasons prompting it. Thereafter, Professional Services Contractor shall have ten (10) days to cure such default ("Cure Period") or a reasonable period of time if it is practically impossible to cure such default within ten days provided that Professional Services Contractor gives Princeton University reasonable assurances that a satisfactory cure will be effectuated within such reasonable time. Should the default not be cured, nor reasonable assurances given that the default will be cured within a reasonable time, the termination shall take effect, without further notice, on the date specified in the notice. However, the termination will not take effect if, before the termination's effective date, Princeton University delivers to Professional Services Contractor a written revocation of the termination.

(3) **Termination Remedy Cumulative.** The remedy of termination is not exclusive, but is in addition to all other rights or remedies Princeton University may have in law or equity for any breach by Professional Services Contractor. Neither termination of the BOA or RO nor any payment to Professional Services Contractor shall limit or impair the right of Princeton University to recover damages occasioned by the fault or default of Professional Services Contractor.

(4) **Effect of Wrongful Termination Under This Section.** If any termination for default is later determined to have been improperly effected Professional Services Contractor shall be entitled to receive, as its sole remedy, the costs or damages described in paragraph (b) hereof.

(b) **Termination for Convenience.** Princeton University may terminate the BOA or an RO issued under the BOA, without declaring Professional Services Contractor in default, with or without cause, by providing Professional Services Contractor with thirty (30) calendar days' written notice of termination at any time if Princeton University should abandon a project, or after completion of the Construction Documents Phase, whether or not a project is abandoned.

If the Professional Services Contractor is a sole proprietor and the Professional Services Contractor should die during the term of this BOA, this BOA shall be considered terminated. In the event of such termination, the Professional Services Contractor's estate shall be entitled to reasonable payment for any uncompensated work performed to the date of death, and Princeton University shall have title to and/or the right to immediate use and possession of all finished and unfinished documents prepared under this BOA, as if this BOA had been terminated for the convenience of Princeton University pursuant to this paragraph (b).

(c) **Deliverables and Compensation.** In the event of termination, Professional Services Contractor shall promptly deliver to Princeton University all records, documents, working papers, calculations, computer programs, data, drawings, plans, specifications and other tangible work products and all equipment, materials, items or objects acquired by Princeton University and reimbursed by Princeton University, pertaining to the services performed under this BOA to the time of termination; provided that Princeton University has paid to Professional Services Contractor all amounts due and owing as of the date of determination, exclusive of amounts disputed in good faith by Princeton University. In addition,

(1) If termination is under paragraph (a) for default, compensation will be paid only for services properly performed and actual expenses incurred through the date of termination less

the amount of any asserted claims of Princeton University or any claims arising out of such termination, including without limitation claims attributable to any excess procurement costs incurred to complete the remaining obligations of Professional Services Contractor under this BOA.

(2) If termination is under paragraph (b) for convenience, Professional Services Contractor shall be paid a percentage of its Basic Services compensation corresponding to the value of the work actually completed by Professional Services Contractor as of the date of the termination, together with compensation for any approved Additional Services actually completed. The value of Basic Services completed shall be based upon the breakdown set forth in the Article IX. The payment of these amounts is Professional Services Contractor's sole remedy for termination for convenience. In no event shall Professional Services Contractor be entitled to recover any additional amounts after termination under this section, including, without limitation, profits or overhead on portions of the work not performed as of the effective date of termination. Compensation shall in no case exceed the limits established in this BOA for each phase of the work as to which Princeton University has expressly authorized Professional Services Contractor to proceed, plus reasonable expenses arising from and limited to Professional Services Contractor's demobilization of staff as a direct result of termination of this BOA.

(d) **Termination for Princeton University's Default.** If Princeton University fails to make payments to Professional Services Contractor in accordance with this BOA, exclusive of payments disputed by Princeton University in good faith, such failure shall be considered substantial nonperformance and cause for termination, or, at Professional Services Contractor's option, cause for suspension of performance of services under this BOA. If Professional Services Contractor elects to suspend services, prior to suspension of services, Professional Services Contractor shall give seven (7) days' written notice to Princeton University. In the event of the suspension of services, Professional Services Contractor shall have no liability to Princeton University for delay or damage caused Princeton University because of such suspension of services. Before resuming services, Professional Services Contractor shall be paid all sums due, except amounts disputed by Princeton University in good faith, prior to suspension and any expenses incurred in the interruption and resumption of Professional Services Contractor's services. Professional Services Contractor's fee for the remaining services and the time schedules shall be equitably adjusted. If Professional Services Contractor elects to terminate this BOA for nonpayment or other material breach of BOA, the Professional Services Contractor shall notify Princeton University, in writing, of the termination for default, and the reasons prompting it. Thereafter, Princeton University shall have ten (10) days to cure such default ("Cure Period") or a reasonable period of time if it is practically impossible to cure such default within ten days provided that Princeton University gives Professional Services Contractor reasonable assurances that a satisfactory cure will be effectuated within such reasonable time. Should the default not be cured, nor reasonable assurances given that the default will be cured within a reasonable time, the termination shall take effect, without further notice, on the date specified in the notice. However, the termination will not take effect if, before the termination's effective date, Professional Services Contractor delivers to Princeton University a written revocation of the termination.

#### **ARTICLE XVI – SUSPENSION**

(a) Princeton University, at any time, upon three (3) days written notice to the Professional Services Contractor may suspend all or any part of the services of the Professional Services Contractor.

(b) In the event of suspension by Princeton University as noted above, the Professional Services Contractor shall be entitled to receive reasonable compensation for services already satisfactorily performed and accepted, but no amount shall be allowed for anticipated profit on unperformed services.

(c) Should Princeton University reactivate any assigned work covered by this Contract, in whole or in part, within 180 days from the time the work was suspended, any fees paid to the Professional Services Contractor pursuant to this Contract shall be applied as payment on the fees for the work as set forth in this Contract at this time of reactivation. Should reactivation occur after a period of suspension exceeding 180 days, the Professional Services Contractor and Princeton University may renegotiate the fees based on current conditions or either may unilaterally elect to terminate the Contract as it pertains to the remaining work.

(d) In the event Princeton University decides to suspend any work under this Contract, Princeton University shall remain entitled to unlimited access to all finished and unfinished documents prepared by the Professional Services Contractor pursuant to this Contract and shall be vested with all rights to such documents.

(e) If the Professional Services Contractor should be unwilling or unable to perform the Services required by this Contract at the time Princeton University desires to reactivate the work after a period of suspension, then Princeton University shall have title to and/or the right to immediately use and possess all finished and unfinished documents prepared under this Contract as if the Contract had been terminated pursuant to Article XV(b).

#### **ARTICLE XVII - DISPUTE RESOLUTION**

(a) If a claim, controversy or dispute between Princeton University and Professional Services Contractor arises concerning the interpretation of the BOA, the performance of any portion of Professional Services Contractor's services, or any other matter arising under or relating to this BOA, or the breach thereof, the parties shall promptly confer and exert their best efforts in good faith to reach a reasonable and equitable resolution of the issue.

(b) If the parties are unable to resolve the claim, controversy or dispute within a reasonable time, either party may initiate mediation administered by the American Arbitration Association under its Construction Industry Mediation Rules (online at [www.adr.org](http://www.adr.org)), including, but not limited to, the provisions therein regarding confidentiality. The parties expressly agree that the mediator shall have the authority, in his or her discretion, to (i) engage in fact finding and/or analysis, and (ii) tailor or forgo mediation sessions anticipated by the Construction Industry Mediation Rules.

(c) For any claim, controversy or dispute not resolved through mediation under paragraph (b), either party may initiate litigation, provided that such litigation shall be brought exclusively in the United States District Court for the District of New Jersey or in the Superior Court of the State of New Jersey, Mercer County. The parties agree that any otherwise applicable statute of limitations applicable to claims raised in mediation shall be tolled from the date mediation is initiated until thirty days after the conclusion of mediation, as determined by the mediator. Completion of the mediation process is a condition precedent for either party to initiate litigation, except for litigation seeking a temporary restraining order and/or a preliminary injunction.

(d) Princeton University and Professional Services Contractor agree that this dispute resolution process shall apply to all claims, controversies and disputes arising between them, including those involving other parties which have entered into agreements with Princeton University or Professional Services Contractor containing provisions substantially similar to this paragraph. In the event of such a claim, controversy or dispute involving third parties bound by such provisions, the procedure set forth above shall be interpreted and applied so as to encompass all such parties to the dispute. The Professional Services Contractor expressly agrees (i) to being joined in any mediation or litigation between Princeton University and one or more third parties giving rise to a claim by Princeton University against Professional Services Contractor relating to the Project, and (ii) to the joinder of one or more third parties in any

mediation or litigation between Princeton University and Professional Services Contractor where such mediation or litigation gives rise to a claim by Princeton University against such third parties.

(e) Pending final resolution of any claim, controversy or dispute, (i) Professional Services Contractor shall proceed diligently with the performance of its obligations under the BOA without interruptions or delay, and shall not directly or indirectly stop or delay its performance; and (ii) Princeton University shall make timely payment in accordance with the BOA of all undisputed amounts.

#### ARTICLE XVIII – MISCELLANEOUS

(a) **Independent Contractor.** In performing hereunder, Professional Service Contractor and its employees, agents, subconsultants and representatives shall be as independent contractors and not as employees or agents of Princeton University. All persons furnished or retained by Professional Services Contractor in connection with this Contract are so furnished or retained as Professional Service Contractor's employees or agents. Professional Service Contractor shall not transact business, enter into agreements, or otherwise make commitments on behalf of Princeton University unless expressly authorized in writing by Princeton University. Neither Professional Service Contractor nor its employees, agents, subconsultants or representatives shall be entitled to benefits provided by Princeton University to its employees, including but not limited to fringe benefits, worker's compensation, health and unemployment insurance, and pension plans. Princeton University shall not pay or withhold federal, state, or local income or other payroll taxes on behalf of Professional Service Contractor or its employees, agents, subconsultants or representatives. Professional Service Contractor agrees to report and pay all applicable taxes. Professional Service Contractor shall defend, indemnify and hold harmless University from and against any and all liability for the payment of taxes, interest and/or penalties, as well as damages and costs, including attorney's fees, in connection with any claim or finding that Professional Service Contractor and/or its employees, agents, subconsultants or representatives are employees of Princeton University.

(b) **Notices.** All notices to be given hereunder shall be in writing, and may be sent or delivered by (1) depositing the same in any international overnight delivery system addressed to the party to be notified, (2) commercial messenger service, (3) email, but such notice shall only be effective if the notice is acknowledged by an automatic receipt or a reply, (4) hand delivery to such party or (5) US certified mail, return receipt requested. Notice deposited in the mail in accordance with the provisions hereof shall be effective and deemed to have been given (unless otherwise extended in such notice) on the third regular business day following the date postmarked on the envelope containing such notice, or when actually received, whichever is earlier. All notices to be given to the parties hereto shall be sent to the Princeton University Administrative Representative or Architect-Engineer Principal in Charge identified in the Agreement. The parties hereto shall have the right to change their respective addresses for receipt of notices hereunder by written notice to the others specifying the new address.

(c) **Rights and Remedies.** Princeton University's review, approval, acceptance or payment for services under this BOA shall not operate as a waiver of any rights under this BOA and Professional Services Contractor shall be and remain liable to Princeton University for all damages incurred by Princeton University as the result of Professional Services Contractor's failure to perform in conformance with the terms and conditions of this BOA. The rights and remedies of Princeton University provided for under this BOA are in addition to any other rights or remedies provided by law.

(d) **No Third Party Beneficiaries.** The parties acknowledge that this BOA is not intended to create, and shall not be construed to create, third party beneficiary rights for or against any third party, except as expressly set forth herein.



(e) **Successors and Assigns.** Professional Services Contractor shall not in whole or in part assign or transfer this BOA or delegate its duties without the prior written approval of Princeton University. Professional Services Contractor for itself and Professional Services Contractor's successors, Subconsultants, assigns, partners and legal representatives, binds them to Princeton University with respect to all covenants of this BOA. Princeton University for itself and its successors, assigns and legal representatives, binds them to Professional Services Contractor with respect to all covenants of this BOA.

(f) **Execution.** The BOA may be signed in more than one identical counterpart, each of which shall be deemed to be an original hereof.

(g) **Limitation of Actions.** The parties agree that any action by Professional Services Contractor against Princeton University arising out of or relating to this BOA shall be commenced within one (1) year after completion of the Services, any otherwise applicable statutory limitations period notwithstanding, except for actions for indemnity or contribution arising out of actions brought against Professional Services Contractor by third parties. The parties further agree that any period of limitations on any claim of Princeton University against the Professional Services Contractor shall in no event begin to run until the date of completion of the Services or until the date on which Princeton University knew, or reasonable should have known, the basis for the claim against the Professional Services Contractor, whichever occurs later.

(h) **Equal Opportunity Employer.** Princeton University is an Equal Opportunity Employer. Pursuant to Executive Orders 11246 and 11375, Section 503 of the Rehabilitation Act of 1973 and Section 402 of the Vietnam-Era Veterans Readjustment Act of 1974, Princeton University has developed Affirmative Action Plans that have been filed with and approved by the U.S. Department of Labor's Office of Federal Contract Compliance Programs, and are available for review upon request. The Professional Services Contractor (and subcontractors, if applicable) shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability. Professional Services Contractor also warrants that it will comply with all applicable executive orders, and federal, state, and local laws, regulations, and rules, and, Princeton University policies, as appropriate, relating to nondiscrimination, equal employment opportunity, and affirmative action.

(i) **Advertisement.** Professional Services Contractor shall not display, issue or permit to be issued any professional award application, advertisement, press release, professional or scholarly journal or literature of any kind that refers, directly or indirectly, to Princeton University or the services performed in connection with the BOA unless it first obtains the written approval of Princeton University. Professional Services Contractor's written request for approval and submission of material shall be made to Princeton University's Project Manager not less than ten (10) day's prior to the date needed for any such requested review and approval. Professional Services Contractor's failure to strictly comply with the terms of this Article XVIII(g) shall be a material breach of this BOA.

(j) **Severability.** Should any provision of this BOA be held unenforceable as a matter of law, the validity of the remaining provisions shall not be affected by such a holding, providing that the unenforceable provision was not a controlling or material inducement to the making of the BOA.

- (k) **Modification.** The parties agree that this BOA may be modified from time to time only by means of written documents signed by both parties. In the normal course, any changes to the provisions of this BOA shall be made by way of an executed change order.
- (l) **Waiver.** It is agreed that no waiver by either party of any breach by the other party of any of the provisions herein shall be deemed a waiver as to any prior, subsequent and/or similar breach, or any other breach whatsoever.
- (m) **Applicable Law.** This BOA is deemed entered into in the state of New Jersey, and is to be construed under the laws of that state.
- (n) **Applicable Currency.** The applicable currency for all price and other monetary terms in the BOA shall be U.S. Dollars. Payment under the BOA shall not be made in any other currency.
- (o) **Licensed Professional Services Contractor.** Professional Services Contractor hereby warrants that for the duration of the BOA it shall be fully licensed and authorized to practice in New Jersey and to provide any other services required under the BOA.
- (p) **Records/Right to Audit.** The Professional Services Contractor is required to retain records which shall include, but not be limited to, copies of all plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, policies, procedures, accounting records and other data, regardless of type and regardless of whether such items are in written form, in the form of electronic data, or in any other form, which document the Project, its design, and its construction, and all costs relating thereto, and that in Princeton University's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by the BOA. The Professional Services Contractor shall retain all records relating to this BOA until the expiration of seven (7) years after final payment is made under this BOA's final Release Order or for any longer period of time as may be required by law or good business practice, or six (6) months after final resolution (by non-appealable judgment or settlement) of any disputes, whichever may be later. Upon the request of Princeton University, and by no later than three (3) days after written notice, the Professional Services Contractor shall make its records available during normal business hours to Princeton University, its authorized representative(s) or to any state, federal or other regulatory authority. Any such authority, Princeton University and its authorized representative(s) shall be entitled to inspect, examine, review, copy and audit the Professional Services Contractor's records at its own expense, within adequate work space at the Professional Services Contractor's facilities. Failure by the Professional Services Contractor to supply substantiating records shall be reason to exclude the related costs from amounts which might otherwise be payable by Princeton University to the Professional Services Contractor pursuant to the BOA.
- (q) **Entire Agreement.** This BOA represents the entire and integrated agreement between Princeton University and the Professional Services Contractor and supersedes all prior negotiations, representations or agreements, either written or oral.



IN WITNESS WHEREOF, the Parties hereto have executed this Basic Ordering Agreement:

**ON BEHALF OF  
FIRM NAME**

BY: \_\_\_\_\_

PRINTED: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**ON BEHALF OF  
THE TRUSTEES OF PRINCETON UNIVERSITY**

BY: \_\_\_\_\_

PRINTED: KyuJung Whang

TITLE: Vice President for Facilities

DATE: \_\_\_\_\_

Model Document

**BASIC ORDERING AGREEMENT NUMBER FB100####A**

**BOA SERVICE**

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**PART II**

**BOA SCOPE OF SERVICES DOCUMENTS**

Model Document