



PRINCETON UNIVERSITY

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

PROFESSIONAL SERVICES

FOR

PROJECT/SERVICE TITLE

CONTRACT NUMBER FC100#####

WITH

FIRM NAME

CONTRACT NUMBER FC100#####

PROJECT/SERVICE TITLE

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PART II SCOPE OF PROFESSIONAL SERVICES

**PART I
AGREEMENT**

PROJECT/SERVICES	EFFECTIVE DATE OF CONTRACT
Project/Service Title	Month DD, YYYY
THE TRUSTEES OF PRINCETON UNIVERSITY	PROFESSIONAL SERVICES CONTRACTOR
Princeton University Facilities Contract Administration Office E. A. MacMillan Building Annex Princeton, NJ 08544	Firm Name Address, City, State, Zip

This Professional Services Contract (the "Contract") for Project/Service Title (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] and fully licensed and authorized to provide the required services under New Jersey law, with its principal offices located at the address shown above.

WITNESSETH

WHEREAS, Princeton University desires that the Professional Services Contractor furnish the services specified herein; 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;

NOW THEREFORE, the parties do mutually agree as follows:

ARTICLE I - THE "CONTRACT"

The Contract is comprised of the following documents, including all modifications thereof:

Part I -- Agreement

Part II -- Scope of Professional Services including the following documents:

- Letter dated 1/1/2008, Subject: Princeton Proposal (attached)

The documents shall be complementary and are intended to include and imply all items required for the proper execution and completion of the Services (as defined in Article II). However, to the extent the terms of the documents may conflict, the documents shall control in the order listed above.

ARTICLE II – DEFINITIONS

The following definitions are applicable to this Contract:

- (a) The term “**Professional Services Contractor**” includes individuals in the employ of the Professional Services Contractor, as well as Subconsultants separately engaged by the Professional Services Contractor, in the performance of this Contract.
- (b) The term “**Basic Services**” means those services as more fully described in the Contract, which Professional Services Contractor shall perform within the NTE Price.
- (c) The term “**Contract**” means the contract between Princeton University and the Professional Services Contractor, comprised of the Agreement and the Scope of Professional Services.
- (d) The term “**Cure Period**” means the ten (10) day period under Article XV during which either party may cure deficiencies in performance.
- (e) The term “**Hourly Expenses**” means those permitted labor expenses incurred by the Professional Services Contractor for the performance of Basic Services as more fully described in Article IX(a)(1) of the Agreement.
- (f) The term “**Hourly Expenses NTE Amount**” means the ceiling or “not-to-exceed” (NTE) limit on the Professional Services Contractor’s completion for Hourly Expenses incurred in the performance of Basic Services under the Contract. The Hourly Expenses NTE Amount includes compensation for any Subconsultants, but 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 Article IV of the Agreement.
- (h) The term “**NTE Price**” means the ceiling or “not-to-exceed” (NTE) limit for maximum compensation to the Professional Services Contractor for performance of Basic Services under this Contract.
- (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(s)**” means the Technical Representative and the Administrative Representative of Princeton University authorized to bind Princeton University under the Contract.
- (k) 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 Article IX(b) of the Agreement.
- (l) The term “**Reimbursable Expenses NTE Amount**” means the ceiling or “not-to-exceed” limit on the Professional Services Contractor’s compensation for Reimbursable Expenses incurred in the performance of Basic Services under the Contract.
- (m) The term “**Services**” means all services to be performed by or on behalf of the Professional Services Contractor pursuant to this Contract, including services performed by any Subconsultant.
- (n) The term “**Subconsultant**” means a person or entity who or which performs and/or supplies a portion of the Services pursuant to a contract or subcontract with the Professional Services Contractor or Subconsultant (e.g., the term refers to a Subconsultant of any tier).

ARTICLE III - DESIGNATED REPRESENTATIVES

- (a) The Professional Services Contractor’s designated representatives are:
 - PSC Principal Name - Principal in Charge
 - PSC PM Name - Project Manager
- (b) Princeton University’s designated project and administrative representatives (individually and collectively herein “Princeton University Representatives”) are:
 - PM Name - Project Manager (Technical Representative)
 - CA Name - Contract Administrator (Administrative Representative)
- (c) Agreements made by and/or actions taken by the Professional Services Contractor, which by their nature effect a change to this Contract, 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 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 IV - KEY PERSONNEL

- (a) **Professional Services Contractor’s Key Personnel.** The Key Personnel of the Professional Services Contractor specified below, if any, are considered to be essential to the Services being performed hereunder:

Name, Title	Name, Title
Name, Title	Name, Title

- (b) **Change in Key Personnel.** Prior to reassigning any of the specified Key Personnel to other projects, 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. This Contract may be amended from time to time during the course of the Contract to either add or delete Key Personnel, as appropriate. Any change to the Key Personnel listed above 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 Contract.

ARTICLE V - PRINCETON UNIVERSITY’S RESPONSIBILITIES

- (a) **Requirements.** Prior to execution of this Contract, Princeton University has provided to the Professional Services Contractor the Scope of Professional Services, which comprises Part II of the Contract, and which sets forth a description of Princeton University’s requirements. Throughout the term of the Contract, 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 Professional Services Contractor’s Services under this Contract.
- (b) **Review and Approval of Documents; Responsiveness.** The Princeton University Representative shall examine the documents submitted by the Professional Services Contractor and shall render decisions that pertain thereto promptly to avoid unreasonable delay in the progress to the Professional Services Contractor’s Services.

(c) **Documents.** Princeton University will provide access to and copies of all available documents related to the required services.

(d) **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 the Services or nonconformance with the Contract Documents.

ARTICLE VI - GENERAL RESPONSIBILITIES

(a) **Project Administration Services.** The Professional Services Contractor shall provide all project administration services necessary to facilitate the orderly progress of the Services, including attending meetings, communicating with others as appropriate, monitoring progress and issuing progress reports to Princeton University, supervising Professional Services Contractor's in-house personnel, directing Professional Services Contractor's Subconsultants and coordinating and managing information flow and decision-making.

(b) **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 all its employees and Subconsultants. In addition, the Professional Services Contractor shall coordinate its Services with services provided by Princeton University.

(c) **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.

(d) **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.

(e) **Princeton University Design Standards.** Any design services provided under this Contract 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 Contract 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.

(f) **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.

(g) **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 these Services.

(h) **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.

(i) **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 VII - 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 the documents set forth or referenced in *Part II -- Scope of Professional Services*. These services shall be performed according to generally accepted standards of professional practice.

ARTICLE VIII - RESERVED

ARTICLE IX – COMPENSATION

(a) **Basic Services Compensation.** The Professional Services Contractor agrees to perform all of the services described in Articles VI and VII for the NTE Price of **\$TBD (TBD Dollars)** which includes the Hourly Expenses NTE Amount and the Reimbursable Expenses NTE Amount. The NTE Price is the maximum compensation Professional Services Contractor will receive for Basic Services unless otherwise agreed in writing by Princeton University.

(1) **Hourly Expenses NTE Amount.** In full compensation for the Professional Services Contractor’s Basic Services and those of its Subconsultants (but excluding compensation for Reimbursable Expenses), Princeton University shall pay to Professional Services Contractor the actual permitted labor expenses incurred by the Professional Services Contractor using the following hourly billing rates which in the aggregate shall not exceed the total ceiling amount of **\$Hourly Expenses NTE Amount** for Hourly Expenses:

<u>Individual/Title/Labor Category</u>	<u>Hourly Rate</u>
_____	_____
_____	_____

(2) **Reimbursable Expenses NTE Amount.** As full compensation for Professional Services Contractor’s Reimbursable Expenses, Princeton University shall pay to Professional Services Contractor the actual permitted expenses incurred by Professional Services Contractor and its Subconsultants, at cost and with no markup, which in the aggregate shall not exceed the total not-to-exceed amount of **\$Reimbursables** for Reimbursable Expenses.

(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 this Contract whether

incurred directly by the Professional Services Contractor or any of 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) **Additional Services and Adjustments to the NTE Price.** For changes in the scope of Services, Princeton University will, upon its written agreement thereto, compensate Professional Services Contractor on an hourly basis, as set forth in the schedule of hourly rates below, up to a negotiated maximum fee, or via a negotiated fixed fee if the scope of services can reasonably be determined in advance.

(1) If Princeton University requests that Professional Services Contractor perform any services in connection with the Services that Professional Services Contractor believes are not included within its Basic Services, Professional Services Contractor shall promptly so inform Princeton University in writing and shall provide a fixed or not-to-exceed cost to Princeton University for providing such services. Professional Services Contractor shall not proceed with the additional services until it receives an express written authorization executed by Princeton University. However, if Princeton University, in the exercise of its reasonable judgment, concludes that the services in question are Basic Services and directs the Professional Services Contractor to proceed, the Professional Services Contractor shall proceed without delay. Failure to so proceed shall constitute a material breach of this Contract; provided, however, that by so proceeding the Professional Services Contractor does not waive any claim that it may have related to such services.

(2) In no event will the Professional Services Contractor be entitled to any increase in the NTE Price, or any compensation for additional services, under this paragraph (c) unless the circumstances giving rise to any claim for additional compensation necessitate the preparation of additional sketches, drawings, or other documents, or the making of substantial changes in any document which has already been approved by Princeton University or upon which substantial work has already been performed, or other substantial work by the Professional Services Contractor.

(3) Hourly Billing Rates. The following rates apply to this Contract, and shall remain fixed for the entire duration of this Contract:

<u>Individual/Title/Labor Category</u>	<u>Hourly Rate</u>
_____	_____
_____	_____
_____	_____

(d) **Notification Requirement.** If at any time the Professional Services Contractor has reason to believe that the expenses to be incurred in performing this Contract 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 Reimbursable Expenses NTE Amount, the Professional Services Contractor shall notify Princeton University giving a revised estimate of total expenses along with supporting reasons and documentation.

ARTICLE X – PAYMENTS

(a) Professional Services Contractor shall prepare and submit monthly invoices to request payments under this Contract. Invoices shall be typed or computer-generated and include the following minimum information: FPO Contract Number FC100#####; 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. The Professional Services 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 Article IX(a)(1) above.

(2) 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.

(3) In no event shall amounts in excess of the Hourly Expenses NTE Amount or the Reimbursable Expenses NTE Amount established in the Contract be paid by Princeton University.

(c) 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 in Article III(b).

(d) 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.

(e) 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 Contract or upon request at mutually convenient times. The Professional Services Contractor shall retain all records relating to this Contract until the expiration of seven (7) years after final payment is made under this Contract, or six (6) months after final resolution (by non-appealable judgment or settlement) of any disputes, whichever may be later.

(f) 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 Contract.

ARTICLE XI - TIME OF PERFORMANCE

Time is of the essence of the Contract. The Professional Services Contractor shall perform its Services under the Contract in accordance with the schedule set forth below:

Month DD, YYYY to Month DD, YYYY

ARTICLE XII - INSURANCE AND INDEMNIFICATION

(a) **Insurance.** Prior to beginning any of the Work on the Project or at the time of execution of this Contract, whichever occurs first, the Professional Services Contractor shall establish, maintain and keep in force policies for minimum insurance coverage as set forth below:

- (1) **Workers 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 contract 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 this Project or under this Contract. 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 Contract 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 Fixed Fee or 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 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 Contract, 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) Prior to commencing any work on the Project or execution of this Contract, whichever occurs first, the Professional Services Contractor or its Insurance Carrier shall provide a Certificate(s) of Insurance (COI) evidencing compliance with all requirements for insurance coverage 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 contract, the Professional Services Contractor or its Insurance Broker/Carrier shall provide updated COI's to evidence renewals or other changes to insurance policies or coverage. Additionally, a COI shall be provided, and updated annually, that evidences that the required Professional Liability coverage is in place for at least three (3) years following Substantial Completion of the Project.

(g) **Indemnification.** The Professional Services Contractor agrees to indemnify, hold harmless, protect and defend Princeton University and its agents, representatives and any affiliated or related entities against any and 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 or due to the negligence or fault of the Professional Services Contractor, its agents, consultants, employees, or representatives, regardless of whether or not such claim, loss, liability, damage, cost or expense is caused in part by a party indemnified hereunder.

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 Contract, 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 Contract.

(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 Contract 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 of Contract for Professional Services Contractor's Default.

(1) **Grounds.** If Professional Services Contractor fails to perform any of its material duties under the Contract in a timely fashion, for reasons not due to the fault of Princeton University, Contractor or any subcontractor, or otherwise materially breaches the Contract in any way, Princeton University may terminate the Contract for default. Without limitation, termination for default will be permitted if Professional Services Contractor 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 Contract; 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 Contract 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 of contract by Professional Services Contractor. Neither termination of the Contract 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 Contract, 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 the Professional Services Contractor is a sole proprietor and the Professional Services Contractor should die during the term of this Contract, this Contract 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 Contract, as if this Contract 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 Contract 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 Contract.

(2) If termination is under paragraph (b) for convenience, Professional Services Contractor shall be paid the value of the work actually completed by Professional Services Contractor as of the date of the termination. 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 Contract, plus reasonable expenses arising from and limited to Professional Services Contractor's demobilization of staff as a direct result of termination of this Contract.

(d) **Termination of Contract for Princeton University's Default.** If Princeton University fails to make payments to Professional Services Contractor in accordance with this Contract, 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 Contract. 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 Contract for nonpayment or other material breach of contract, 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 Contract, the performance of any portion of Professional Services Contractor's services, or any other matter arising under or relating to this Contract, 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 fifteen (15) business days (or such longer time agreed to by both parties), they shall, upon demand by either party, within ten (10) business days thereafter (or such longer time agreed to by both parties), agree upon and retain (with expenses to be borne equally by the parties) a neutral individual to act as a mediator. (If the parties cannot agree upon a mediator within the time period, the selection shall be made by the American Arbitration Association upon the request of either party, with the administrative costs for such selection to be borne equally by the parties.) The mediation shall be conducted within sixty (60) days of the appointment of the mediator (unless the parties agree to a later date), and shall be conducted confidentially in an effort to settle the claim, controversy or dispute.

(c) If the claim, controversy or dispute is not settled within ten (10) business days after the first day of mediation (or such longer time agreed to by both parties), either party may initiate litigation in the United States District Court for the District of New Jersey that covers Mercer County, or in the Superior Court of the State of New Jersey for Mercer County, and Professional Services Contractor may not initiate litigation in any other forum; however, neither party may initiate litigation against the other without first utilizing the process set forth in this Article XVII except for seeking a temporary restraining order and/or a preliminary injunction. To the extent permitted by law, the parties agree that any statute of limitations applicable to any claim, controversy or dispute shall be tolled from the date that such notice is sent under subparagraph (b) above until the first day upon which the parties are permitted to initiate litigation as set forth in this subparagraph (c).

(d) Princeton University and Professional Services Contractor agree that this Article XVII shall apply to all claims, controversies and disputes arising between them, including those involving other parties which have entered into contracts with Princeton University or the Professional Services Contractor containing provisions substantially similar to this Article. 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. (For example, notice must be given to all parties, all parties must agree to extensions of time, and all parties must share proportionately the costs of the mediator referred to above.) 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 Contract 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 Contract of all undisputed amounts.

ARTICLE XVIII – MISCELLANEOUS

(a) **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.

(b) **Rights and Remedies.** Princeton University's review, approval, acceptance or payment for services under this Contract shall not operate as a waiver of any rights under this Contract 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 Contract. The rights and remedies of Princeton University provided for under this Contract are in addition to any other rights or remedies provided by law.

(c) **No Third Party Beneficiaries.** The parties acknowledge that this Contract 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.

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

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

(f) **Limitation of Actions.** The parties agree that any action by Professional Services Contractor against Princeton University arising out of or relating to this Contract 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.

(g) **Equal Opportunity.** 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.

(h) **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 Contract 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 Contract.

(i) **Severability.** Should any provision of this Contract 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 Contract.

(j) **Modification.** The parties agree that this Contract 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 Contract shall be made by way of an executed change order.

(k) **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.

(l) **Applicable Law.** This Contract is deemed entered into in the state of New Jersey, and is to be construed under the laws of that state.

(m) **Applicable Currency.** The applicable currency for all price and other monetary terms in the Contract shall be U.S. Dollars. Payment under the Contract shall not be made in any other currency.

(n) **Licensed Professional Services Contractor.** Professional Services Contractor hereby warrants that for the duration of the Contract it shall be fully licensed and authorized to practice in New Jersey and to provide any other services required under the Contract.

(o) **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 Contract. The Professional Services Contractor shall retain all records relating to this Contract until the expiration of seven (7) years after final payment is made under this Contract 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 Contract.

(p) **Entire Contract.** This Contract 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.

CONTINUED ON NEXT PAGE

MODEL DOCUMENT

IN WITNESS WHEREOF, the Parties hereto have executed this Contract:

**ON BEHALF OF
PROFESSIONAL SERVICES CONTRACTOR**

BY: _____

PRINTED: _____

TITLE: _____

DATE: _____

WITNESS TO SIGNATURE

BY: _____

PRINTED: _____

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

BY: _____

PRINTED: Mike McKay

TITLE: Vice President for Facilities

DATE: _____

WITNESS TO SIGNATURE

BY: _____

PRINTED: _____

MODEL DOCUMENT

CONTRACT NUMBER FC100#####

PROJECT/SERVICE TITLE

PART II

SCOPE OF PROFESSIONAL SERVICES

The following document(s) attached hereto or incorporated by reference comprise the Scope of Professional Services for this contract:

- Letter dated 1/1/2008, Subject: Princeton Proposal (attached)