



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	“Start Date”: Month DD, YYYY “End Date”: Month DD, YYYY
THE TRUSTEES OF PRINCETON UNIVERSITY	PROFESSIONAL SERVICES CONSULTANT
Princeton University Facilities Procurement Office E. A. MacMillan Building Princeton, NJ 08544	Firm Name Address, City, State, Zip

This Basic Ordering Agreement (the “BOA”) for BOA Service 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 Consultant”), 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 Consultant furnish professional services more fully described in the documents comprising this BOA and in each Release Order issued under this BOA; and

WHEREAS, the Professional Services Consultant 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, in consideration of the mutual promises set forth below and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Princeton University and the Professional Services Consultant do mutually agree as follows (each of Princeton University and Professional Services Consultant may hereinafter be referred to as a party or collectively as the parties):

ARTICLE I – THE “BASIC ORDERING AGREEMENT” AND THE “BOA DOCUMENTS”

(a) The “BOA Documents” consist of the documents listed below in this paragraph, including all BOA Amendments thereto, all of which form the “BOA” and are as fully a part of the BOA as if attached to this Agreement or repeated herein. Notwithstanding anything in the BOA Documents to the contrary, a modification to the BOA may only be made by a written amendment to the BOA signed by both parties (“BOA Amendment”). The BOA Documents are:

- (1) **This Agreement (Part I).**
- (2) **BOA Scope of Services Documents (Part II).**

(b) Any documents attached to any of the above identified BOA Documents or identified therein as being part of said document or this BOA shall be deemed incorporated therein and herein as part of the BOA Documents subject to any other applicable terms and conditions of the BOA Documents. Without limitation to the general applicability of Article I(d) to all terms and conditions and obligations of the BOA Documents, and subject to Article 1(e), to the extent of any conflict, inconsistency, ambiguity, or omission between or among the terms of any of the BOA Documents, the greater or more stringent terms/conditions/obligations as applied to the Professional Services Consultant shall control.

(c) The BOA represents the entire and integrated agreement between the parties and supersedes any and all prior negotiations, representations or agreements, either written or oral, of every kind, concerning this BOA or the Basic Services described herein. 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 a BOA Amendment per Article I(a) (i.e., a written Amendment to the BOA).

(d) The BOA Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. The intent of the BOA Documents is also to include all items necessary for the proper issuance and completion of the all Basic Services by the Professional Services Consultant authorized by any Release Orders under this BOA. Since the BOA Documents are complementary, what is required by one shall be as binding as if required by all. Items not expressly included in the BOA Documents, but which are reasonably inferable therefrom as being necessary to produce the intended results, shall be deemed included in the Basic Services. In the event of any inconsistency, conflict, or ambiguity between or among the BOA Documents, the Professional Services Consultant shall provide the better quality or greater quantity of services or comply with the more stringent requirement or stricter obligations unless expressly qualified in any individual Release Order.

(e) Upon issuance of any individual Release Order, that individual Release Order shall be deemed included in the BOA Documents for that individual Release Order Project subject to any modifications of the BOA Documents by the Release Order for that individual Project. Notwithstanding anything in this BOA to the contrary, to the extent of any conflict, inconsistency, or ambiguity between or among the terms of any individual Release Order and those of any of the BOA Documents, the terms of each individual Release Order shall control as to that Release Order Project.

ARTICLE II – DEFINITIONS

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

(a) The term “**Architect/Engineer**” may or may not refer to the Professional Services Consultant under this BOA, and refers to an individual or firm retained by Princeton University who is responsible for generating designs, Drawings, and/or Specifications for any Work to be performed by the contractor for any construction projects related to any Release Order Projects under this BOA. As used in any BOA Documents, the word “Architect/Engineer” also aggregately includes all subconsultants employed or retained or coordinated by the Architect/Engineer including, but not limited to, structural, mechanical, electrical, or other engineers and subconsultants to design the elements and observe the construction of a building structure or system. If the Architect/Engineer is not the same individual or entity that is the Professional Services Consultant executing this BOA, it is understood the Architect/Engineer may be terminated during the term of any individual Release Order Project and such termination shall not be a breach of this BOA, and within a reasonable time thereafter and to the extent reasonably necessary for the progress of any individual Release Order Project, a new Architect/Engineer shall be retained whose

status under the BOA Documents shall be that of the former Architect/Engineer. Notwithstanding the inclusiveness of the defined term Architect/Engineer herein, in instances where the Architect/Engineer is not the same individual or entity that is the Professional Services Consultant executing this BOA, any required approvals from Architect/Engineer or any submittals to or communication with Architect/Engineer as required of the Professional Services Consultant by or pursuant to the BOA Documents shall be through or with the individual firm identified as the Architect/Engineer (by its authorized representative on any Project as made known to the Professional Services Consultant), unless expressly authorized or directed otherwise in writing by said firm or Princeton University.

(b) The term “**Additional Services**” means those services as further described in Article XIV, which may be performed by the Professional Services Consultant as part of an individual Release Order under the BOA and for which Professional Services Consultant may be compensated in addition to the Fixed Price or NTE Price for any Release Order as provided by Article XIV, Article IX(d), Article XVIII(k), and other applicable terms of the Contract.

(c) The term “**Basic Ordering Agreement**” or “**BOA**” is further defined as this basic agreement on terms and conditions, including pricing, that is issued to facilitate the expeditious issuing of individual Release Orders for Basic Services within the scope established for the BOA. This BOA is not a binding contract, and only becomes part of a binding contract when incorporated by reference in any individual Release Order. This BOA does not state or imply any agreement by Princeton University to issue or enter into future Release Orders, does not require or obligate Princeton University to issue or enter into any minimum number or value of Release Orders, and does not guarantee any minimum or maximum amount of Basic 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 Consultant directly against the BOA, as such Claims may only be made as part of and in connection with individual Release Order. Issuance or execution of Release Orders to obtain the Professional Services Consultant's Basic Services hereunder is wholly within the discretion of Princeton University and nothing herein shall be construed to require Princeton University to use the Professional Services Consultant to perform any Basic Services potentially contemplated herein for any purpose or to limit Princeton University's use of its own employees or other professional services consultants to perform similar services at Princeton University.

(d) The term “**Basic Services**” means those services as more fully described in the BOA and any individual Release Order, that are to be performed by or on behalf of the Professional Services Consultant in connection with any Princeton University issued Release Order under this BOA, including the services of all of its subconsultants as necessary for the performance of such, all of which shall be performed within the Fixed Price or NTE Price established by any Release Order.

(e) The term “**BOA Amendment**” means a change to the provisions of this BOA by means of a written instrument approved and produced and signed by the appropriate Princeton University representative, as more fully defined in Article I(a) and Article III(d).

(f) The term “**Construction Documents**” means the working Drawings, Specifications, general conditions, supplementary general conditions, special conditions, addenda, and electronic submittals developed to set forth in detail all aspects of design, function and construction and will be used for estimating the cost of any Project, and/or securing bids for constructing any Project, and/or directing a contractor in construction of any Project. The Construction Documents shall be full, complete, coordinated, and accurate, enabling any competent contractor to carry them out.

(g) The term “**Design Documents**” means collectively all design, design documents, Drawings, drawings, specifications, Specifications, notes, working papers, reports, calculations, computer programs, data, and other work product created by or on behalf of the Professional Services Consultant in

contemplation of or pursuant to any Release Order under this BOA. If the Professional Services Consultant is not the Architect/Engineer for a Project, the term Design Documents additionally means collectively the Schematic Design Documents, the Design Development Documents and the Construction Documents, prepared by the Architect/Engineer and its Subconsultants.

(h) The term “**Drawings**” means the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

(i) The term “**Fixed Price**” means the lump sum compensation to the Professional Services Consultant for Basic Services for any individual Release Order as provided in Article III(f)(2).

(j) The term “**Key Personnel**” means the essential personnel of the Professional Services Consultant as more fully described in Article V of this Agreement.

(k) The term “**NTE Price**” means the maximum compensation to the Professional Services Consultant for Basic Services for any individual Release Order as provided in Article III(f)(1). The acronym NTE stands for “not-to-exceed”.

(l) The term “**Princeton University**” means The Trustees of Princeton University, the owner of the individual Projects under this BOA, acting through its Princeton University Representatives.

(m) The term “**Princeton University Representative**” means the Project Manager and the Administrative Representative of Princeton University authorized to bind Princeton University under the BOA.

(n) The term “**Professional Services Consultant**” aggregately includes all of the architects and engineers and others in the employ of the Professional Services Consultant, and other subconsultants separately engaged by the Professional Services Consultant who are licensed or otherwise certified to perform the specialized services under this BOA where applicable and also aggregately includes all subconsultants or other individuals or entities in the employ of and/or engaged by the Professional Services Consultant in the performance of its Basic Services under this BOA, without creating any employment or contractual relationship between Princeton University and such individuals and/or entities with the express understanding that this BOA is only between Princeton University and Professional Services Consultant. The Professional Services Consultant may or may not be the Architect/Engineer for a Project, (see paragraph (a) above).

(o) The term “**Professional Standard**” is defined in Article VII(a).

(p) The term “**Reimbursable Expenses**” means those permitted expenses incurred by the Professional Services Consultant in the performance of Basic Services as more fully described in Article IX.

(q) The term “**Reimbursable Expense NTE Amount**” means the not-to-exceed limit on the Professional Services Consultant’s compensation for Reimbursable Expenses incurred in the performance of Basic Services under any Release Orders issued pursuant to the BOA.

(r) The term “**Release Order**” means an individual order for Basic Services issued by Princeton University pursuant to the terms, conditions, and pricing established in this BOA. Each individual Release Order is a binding, individual contract and will reference and incorporate the terms and conditions of this BOA (subject to any modifications set forth in the Release Order) and specify the scope of Basic Services, delivery schedule, Fixed Price or NTP Price, and funding encumbrance for the individual Release Order. See also, Article III(a).

(s) The term “**Specifications**” means that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards, and workmanship for the Work and the performance of related services.

(t) The term “**Substantial Completion**” means substantial completion of any construction contract relating to any Release Order Project, if any, as defined in such construction contract between Princeton University and the Contractor.

(u) The term “**Work**” means, without limitation, the performance and supply of all work, labor, services, materials, supplies, equipment, supervision, and all things necessary to do what is required for the full construction corresponding to any Release Order Project under this BOA by a contractor pursuant to and as further detailed in its construction contract with Princeton University, whether completed or partially completed.

ARTICLE III – BASIC ORDERING AGREEMENT OPERATION

(a) Basic 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 by Princeton University. Release Orders are individual contractual instruments that will be issued unilaterally by Princeton University and will be binding on the Professional Services Consultant either upon Professional Services Consultant’s signed acceptance of the Release Order or upon commencement of Basic Services thereunder by the Professional Services Consultant, whichever occurs first. Princeton University and the Professional Services Consultant shall treat each Release Order as a separate and distinct contract for purposes of contract administration, cost estimating, cost accumulation, billing and payment. Each Release Order shall be an individual, stand-alone “Project” as such term may be used in the BOA Documents.

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

(c) All Services to be performed by the Professional Services Consultant will be ordered only through the issuance of written Release Orders by Princeton University. 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 in its discretion at the time of issuance, will be uniquely numbered, will incorporate all terms and conditions of this BOA by reference unless and to the extent expressly set forth otherwise in the Release Order, and will contain, at a minimum, the following:

- (1) Identification of the Project and a description of the Basic Services to be performed;
- (2) Required completion (delivery) date for the Basic Services and/or Project;
- (3) Fixed Price or NTE Price agreed to by the Parties; and
- (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 therein all terms and conditions of this BOA and the BOA Documents, unless and to the extent expressly stating otherwise. Although a Release Order may include modifications to terms and conditions of the BOA/BOA Documents applicable only to that particular Release Order, Release Orders are not to be considered as a BOA Amendment. As provided in Article I(a) and herein, the terms and conditions set forth in this BOA may be changed outside of the context of an individual Release Order only by a separate BOA Amendment (i.e., an amendment to this BOA expressly identified as such signed by both parties). After issuance by Princeton University and acceptance by

Professional Services Consultant, a Release Order may be modified only by a "Release Order Amendment" issued for that Release Order which is a written amendment to the Release Order signed by both parties as otherwise detailed in Article XVIII(k).

(e) The Professional Services Consultant should not initiate any Basic Services prior to receipt of a written Release Order issued by Princeton University. Upon issuance of a Release Order, the Princeton University Project Manager designated for the Release Order will, for the benefit of Princeton University only and without any limitation to or waiver of any obligations of the Professional Services Consultant required by the Release Order and this BOA, coordinate, schedule, facilitate, and oversee any Basic Services to be performed onsite at Princeton University. This does not preclude advance consultation between the Princeton University Project Manager and the Professional Services Consultant for purposes of defining a scope of Basic Services 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 Price to complete all Basic Services for the Release Order Project based on an advance estimate provided by the Professional Services Consultant. The Professional Services Consultant will then be reimbursed for actual costs up to this NTE 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/subconsultant agreements, 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 (the "Fixed Price") to complete all Basic Services for the Release Order Project based on either unit prices established in this BOA or on an advance price quote provided by the Professional Services Consultant.

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

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

(2) A 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 to be retained by the Professional Services Consultant plus any applicable mark-up at the rates set forth in this BOA.

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

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

(h) The Princeton University Project Manager will review and verify that the scope of work/Basic Services 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 in Princeton University's discretion.

(i) **Services Schedules.** Schedules for individual Release Orders will be established by the Professional Services Consultant in conjunction with the Princeton University Project Manager.

ARTICLE IV – DESIGNATED REPRESENTATIVES

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

Prof. Svc Contractor's Project Manager	-	Project Manager
Prof. Services Contractor's Admin Rep	-	Administrative Representative

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

Designated on each RO	-	Project Manager
Princeton Contract Administrator Name	-	Administrative Representative

(c) Agreements made and/or actions taken by the Professional Services Consultant, 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 an authorized Princeton University Representative and otherwise in conformance with all terms of the BOA Documents. Therefore, any services or change undertaken by the Professional Services Consultant 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 Consultant's own risk.

ARTICLE V – KEY PERSONNEL AND SUBCONSULTANTS

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

(b) **Change in Key Personnel.** Prior to reassigning any specified Key Personnel, the Professional Services Consultant 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 Basic Services or Project identified in the Release Order. Individual Release Orders 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, in its sole discretion other than an instance where said Key Personnel has resigned or been terminated for cause, and any such change made without the prior written approval of Princeton University may be considered a material breach of the BOA. To assist Princeton University in making an evaluation as to particular substitute Key Personnel, the Professional Services Consultant shall provide Princeton University with biographical information (including references) as to said employee and will afford Princeton University an opportunity to interview the proposed replacement so as to enable Princeton University to make an informed decision.

(c) **Subconsultants.** Any subconsultants to be engaged by the Professional Services Consultant to perform the Basic Services shall be specified by name and specialization in the individual Release Order.

(d) **Professional Services Consultant 's Responsibility Regarding Subconsultants.** The Professional Services Consultant represents that, subject to its Professional Standard: (i) Professional Services Consultant has made thorough investigations of all subconsultants to assure that each subconsultant possesses the skill, knowledge and experience qualifying it to perform those aspects of any Release Order issued under this BOA to be performed by it at a standard for design of projects of comparable complexity and pursuant to the Professional Standard; and (ii) each subconsultant can perform without delay the required Basic Services in its areas of expertise at a cost which is reasonable and is within the allowances for such cost which have been taken into account by Professional Services Consultant in agreeing to the compensation provided for in any individual Release Order.

(e) **Princeton University Approval of Subconsultants.** All subconsultants proposed by the Professional Services Consultant shall be subject to the review and approval of Princeton University in advance, which approval shall not be unreasonably withheld and is subject to the qualifications herein. Nothing in this paragraph shall relieve the Professional Services Consultant of its sole and prime responsibility for the performance of the Basic Services, including all performance by subconsultants. Any approval by Princeton University of any subconsultant: (i) is subject to all of the Professional Services Consultant's obligations and representations in this BOA in all regards, including, without limitation, those in paragraph (d) directly above; (ii) shall not act as any kind of approval of the subconsultant's agreement/contract with the Professional Services Consultant; (iii) shall not prejudice Princeton University in any regard; and (iv) shall not act as any waiver by Princeton University of any of the Professional Services Consultant's obligations or any of Princeton University's rights, remedies, Claims (as defined in Article XVII(a)) and/or other claims or defenses under this BOA.

(f) **Subconsultant Agreements/Contracts.** The Professional Services Consultant shall, upon request, provide to Princeton University complete and correct copies of the Professional Services Consultant's contract with each subconsultant, including amendments thereto, for Princeton University's information and records but not for approval. Princeton University's receipt of or failure to request copies of any subconsultant contract shall not prejudice Princeton University in any regard. In any instance where Princeton University may request and/or receive any subconsultant contracts, Princeton University makes no representation that it is reviewing the substance of any contract or approving the contract in any way whatsoever. To the extent that Princeton University may comment on the substance of any subconsultant contract in writing or otherwise, such comment shall be without limitation to and/or without waiver of any of the Professional Services Consultant's obligations under any Release Order and this BOA unless and only to the extent that such waiver or limitation is expressly set forth in writing signed by an authorized Princeton University Representative. The Professional Services Consultant shall enter into written contracts with each subconsultant pursuant to which the subconsultant assumes toward the Professional Services Consultant all of the obligations that the Professional Services Consultant assumes toward Princeton University under individual Release Orders and the BOA. Without limitation to all other requirements in the BOA relating to subconsultants and subconsultant contracts, each of the Professional Services Consultant's subconsultant contracts shall, at a minimum, include the following provisions:

- (1) An agreement by the Professional Services Consultant and subconsultant that Princeton University is an express intended third-party beneficiary of the contract, entitled to enforce any rights thereunder for its benefit, and that Princeton University shall have the same rights and remedies vis-à-vis such subconsultants that the Professional Services Consultant may have, including, but not limited to, the right to be compensated for any loss, expense or damage of any nature whatsoever incurred by Princeton University, resulting from any breach of such contract by the subconsultant, any breach of representations arising out of such contract and any negligent

error or omission of such subconsultant in the performance of any of its professional services obligations under such contract; and

(2) A provision requiring the subconsultant to maintain Professional Liability Insurance in amounts required by Article XII hereof or in such other amounts reasonably available and approved in writing by Princeton University throughout the term of any Release Order and such longer periods as required by this BOA for which it performs Basic Services, and additionally obligating the subconsultant to provide a certified, full and correct copy of its professional liability insurance policy or policies within three (3) days following demand by Princeton University therefore; and

(3) A provision that Princeton University may at any time and without notice to the Professional Services Consultant, contact (either verbally or in writing) the subconsultant to discuss any aspect of the subconsultant's Basic Services; provided that if such contact is in writing, Princeton University shall furnish to the Professional Services Consultant a copy of such correspondence, and further provided that Princeton University shall not direct the services of the subconsultant; and

(4) A provision that upon the filing of a petition under the Federal Bankruptcy Code by the Professional Services Consultant, Princeton University shall have the right to enter into a contract with the subconsultant at the same price as is in the subconsultant's contract with the Professional Services Consultant, with the subconsultant being obligated to perform the same duties it otherwise would have performed under any Release Order issued under this BOA for the Professional Services Consultant; and

(5) A provision which includes the requirements of Article XVII of this BOA (Dispute Resolution); and

(6) A provision which includes the requirements of Article XII(k)(1)-(3) of this BOA (Indemnification); and

(7) A provision which includes the requirements of Article XIII of this BOA (Ownership & Use of Documents); and

(8) A provision that upon any suspension or termination of any subconsultant for any reason, subconsultant shall promptly deliver to Princeton University upon written notice all records, Design Documents, documents, working papers, calculations, computer programs, data, drawings/Drawings, plans, specifications/Specifications and all other work product, and all equipment, materials, items or objects acquired or created or produced by the subconsultant under its subconsultant contract or with regard to any Release Order issued under this BOA to the time of suspension or termination.

(g) **Substitution of Subconsultants.** No substitution of subconsultants from those listed in any individual Release Order, no alteration of the category of Basic Services for particular subconsultants identified in any individual Release Order, 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 Basic Services to be performed and the capability of the proposed subconsultant. Notwithstanding anything in this paragraph (g) to the contrary, any alteration of the area of services for a particular subconsultant identified in any Release Order and/or any use of additional subconsultants from those identified in any Release Order shall not result in an increase in the

Fixed Price or the NTE Price unless as part of an appropriately authorized Release Order Amendment for Additional Services pursuant and subject to all other applicable provisions of this BOA and any individual Release Order.

(h) **No Limitation of Liability for Subconsultants.** The Professional Services Consultant shall not extend any limitation of liability to any subconsultants without the prior, express, written permission of Princeton University in its sole discretion, and with the express understanding that the Professional Services Consultant has entered into this BOA without any expectation whatsoever that Princeton University may consider any such limitation of liability.

(i) **Termination or Suspension of Subconsultant Agreements.** Princeton University reserves the right to require the Professional Services Consultant to terminate contracts or agreements with any retained subconsultants by for performance of Basic Services under any individual Release Orders issued under this BOA. Any compensation for which Princeton University may be liable as a result of such termination shall be limited to amounts as described in Article XV. In the event of any suspension or termination of any subconsultant contracts or agreements by Professional Services Consultant, whether or not required by Princeton University, Professional Services Consultant will ensure prompt delivery of all records, documents, working papers, calculations, computer programs, data, Drawings/drawings, plans, Specifications/specifications and all other work product, and all equipment, materials, items or objects acquired or created or produced by the subconsultant pertaining to any Basic Services or Additional Services performed under any Release Order through the time of suspension or termination.

ARTICLE VI – PRINCETON UNIVERSITY’S RESPONSIBILITIES

(a) **Release Order Requirements.** Prior to the issuance of an individual Release Order, Princeton University will provide the Professional Services Consultant 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 Release Order, Princeton University shall consult with the Professional Services Consultant and provide in a timely manner such additional information as may be reasonably necessary for the Professional Services Consultant to perform its Basic Services under the Release Order.

(b) **Review and Approval of Documents.** Princeton University’s Representatives shall examine any documents submitted by the Professional Services Consultant and shall render any decisions that pertain thereto so as to avoid unreasonable delay in the progress of the Basic Services under any Release Orders issued under this BOA.

(c) **Existing Conditions Documents.** Upon written request, Princeton University will provide access to or copies of all available drawings and other documents reasonably related to the required Basic Services under any Release Orders issued under this BOA.

(d) **Surveys and Investigations.** Princeton University will provide 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 with regard to any Release Orders issued under this BOA. The Professional Services Consultant shall inform Princeton University of all surveys, investigations, inspections, or tests (collectively “investigations”) that should be performed for the proper design and construction of any individual Release Order Project, but that are not within the scope of the Basic Services under the individual Release Order. The Professional Services Consultant shall render advice as to when such investigations should be performed to avoid any delay to the completion of a Release Order 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 Consultant shall review the results of all investigations applicable to its Basic Services and take these into account appropriately.

ARTICLE VII – PROFESSIONAL SERVICES CONSULTANT’S RESPONSIBILITIES

(a) **Basic Services.** Basic Services of the Professional Services Consultant shall, without limitation, include the services and obligations of all professional and technical disciplines needed to perform the services and obligations described in this Article, Article V, and elsewhere in the BOA Documents and any individual Release Order. Princeton University will order such Basic Services via the issuance of individual Release Orders under and in accordance with this BOA. These Basic Services are to be provided unless specifically excluded in an individual Release Order. All Basic Services shall be performed: (i) according to the professional skill and care ordinarily employed by competent architects and engineers and/or other licensed design professionals and/or other professionals (as applicable to the specific Basic Services provided by the Professional Services Consultant pursuant to any Release Order issued under this BOA) on higher education institutional projects of the same or similar size, complexity and duration located in and about the Mid-Atlantic and Northeast United States (the “Professional Standard”); (ii) in compliance with all applicable federal, state, county and municipal laws, regulations, codes, ordinances and orders (including without limitation, building codes, fire codes, handicapped access laws, and other similar laws, regulations, codes ordinances and orders), whether issued by the United States of America, the State of New Jersey, the County of Mercer, Princeton, or any other authority having jurisdiction over any Release Order Project hereunder or related Work; (iii) in accordance with the Design Standards as provided in this BOA; and (iv) diligently and in the best interests of Princeton University.

(b) **Project Administration Services.** The Professional Services Consultant shall provide all project administration services necessary to facilitate the orderly progress of any Release Order Project issued under this BOA 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 Consultant’s in-house personnel, and coordinating and managing information flow and decision-making.

(c) **Coordinated Services.** The Professional Services Consultant acknowledges that it is essential that all Basic Services be coordinated, including services provided by Princeton University. The Professional Services Consultant shall coordinate the Basic Services of its architects, engineers, and other subconsultants. The Professional Services Consultant shall review and check all drawings/Drawings and specifications/Specifications prepared by the Architect/Engineer (if Professional Services Consultant is not the Architect/Engineer), and/or prepared by any other architects, engineers, and other subconsultants, 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 Consultant shall coordinate its Basic 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 Consultant shall identify and notify Princeton University in writing of all information or documents required to be provided by Princeton University for the Basic Services, and if necessary, shall gather available documents from Princeton University’s identified record storage location. The Professional Services Consultant shall assemble, review, and coordinate data furnished by Princeton University.

(e) **Design Criteria, Laws, Codes, and Regulations.** The Professional Services Consultant shall identify and research all design criteria, statutes, laws, codes, regulations, ordinances, building and safety codes, lawful orders of public and quasi-public authorities and agencies and governments or governmental

agencies or other authorities with jurisdiction over and/or applicable to the design or Basic Services being provided by Professional Services Consultant for any Release Order Project and shall, consistent with its Professional Standard, perform its Basic Services in compliance therewith. If appropriate, and with Princeton University's approval, the Professional Services Consultant and/or its subconsultants shall review a Project with authorities having jurisdiction and 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 Release Order Project and authorized by Princeton University, the Professional Services Consultant shall prepare necessary code variance applications.

(f) **Princeton University Design Standards.** Any design services provided as Basic Services under individual Release Orders shall comply with the Princeton University Facilities Design Standards Manual Release 12.0 (June 2018) (the "Design Standards"). Notwithstanding the preceding, the Professional Services Consultant is obligated to review the Design Standards subject to Professional Services Consultant's Professional Standard and if the Professional Services Consultant judges any aspect of the Design Standards to be in conflict with a Project requirement, or any of the statutes, laws, codes, rules, regulation and orders for which the Professional Services Consultant shall design any Release Order Project and/or provide its Basic Services as provided in paragraph (e) above, or to be otherwise detrimental to the Project in any manner whatsoever, the Professional Services Consultant shall so notify the Princeton University Representative in writing, and abide by written direction from the Princeton University Representative; provided, however, that if in its professional judgment, the Professional Services Consultant believes that any such direction from the Princeton University Representative would violate any of the statutes, laws, codes, rules, regulation and orders for which the Professional Services Consultant shall design any Release Order Project and/or provide its Basic Services as provided in paragraph (e) above or its Professional Standard or sound design practice, or is likely to result in additional cost or delay, the Professional Services Consultant shall so notify the Princeton University Representative in writing before proceeding. If the Professional Services Consultant deviates from the Design Standards without specific written authorization from Princeton University to do so, Princeton University may instruct the Professional Services Consultant to modify any Design Documents or other Basic Services as necessary, without additional compensation and no adjustment to the Fixed Price or NTE Price, to comply with the Design Standards. In the event that any aspect of any Release Order Project is designed and 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 make a Claim (as defined in Article XVII(a)) and/or other claim for errors and/or omissions on the part of the Professional Services Consultant in that regard and seek indemnification therefore. Notwithstanding anything herein to the contrary, in no event shall the obligations in this paragraph (f) or any other obligations in the BOA be deemed to require any Professional Services Consultant and/or its subconsultants to provide Basic Services for which any of them are required by applicable law to be licensed and they do not have such license. However, the preceding sentence shall not, in any manner whatsoever, limit Professional Services Consultant's obligation to ensure that it and all of its employees and subconsultants are fully and properly licensed as applicable and necessary to perform all Basic Services required by all Release Orders under this BOA in compliance with all applicable laws.

(g) **Design Documents.** When design services are required as Basic Services under individual Release Orders, the Professional Services Consultant 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 Consultant 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 Consultant'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 Consultant's responsibilities with respect to such documents in any manner whatsoever.

(h) **Meetings.** The Professional Services Consultant shall schedule all meetings with Princeton University through the Princeton University's Project Manager. The Professional Services Consultant shall prepare an agenda for and minutes of all meetings attended by the Professional Services Consultant. The Professional Services Consultant 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 Consultant shall not engage in any activity, or accept any employment, interest, or contribution that would reasonably appear to compromise the Professional Services Consultant's professional judgment with respect to Services provided under any Release Order issued under this BOA.

(j) **Confidential Information.** The Professional Services Consultant shall maintain the confidentiality of information designated as confidential by Princeton University, as well as any data and information that the Professional Services Consultant may derive from such confidential information, in strict confidence, and no less rigorously than it protects its own confidential data and information of a similar nature, and shall not disclose any of such information to others, including its employees, except: (i) to the extent necessary to enable Professional Services Consultant to carry out its Work or to effectuate any term or provision of any Release Order issued under this BOA, including without limitation any mediation or litigation to enforce any Release Order issued under this BOA; (ii) disclosures to Professional Services Consultant's accountants, attorneys, financial advisors; and (iii) disclosures required by law, including without limitation in response to lawful process or subpoena or other valid or enforceable order of a court of competent jurisdiction or any filings with governmental authorities, except that the Professional Services Consultant shall provide notice to Princeton University sufficiently in advance (but in no event less than five (5) business days) of the requested disclosure in order to permit Princeton University to seek a protective order, to the fullest extent such notice is lawful. This confidentiality obligation shall apply to confidential information provided by Princeton University prior to the execution of this BOA and any Release Order issued under this BOA. Confidential information, including the copyright and all other intellectual property rights of the confidential information, provided by Princeton University is owned by Princeton University, and nothing in this BOA or any Release Order issued under this BOA conveys any ownership rights to the Professional Services Consultant. Professional Services Consultant shall similarly obligate any and all persons and/or entities to whom such information is necessarily disclosed hereunder, including without limitation its Subconsultants, to maintain said information in strict confidence in conformance with the terms of this paragraph. Professional Services Consultant agrees to be liable for any breach of this confidentiality obligation by any of its Subconsultants or their respective employees or representatives. Professional Services Consultant also agrees that, in the event of any breach of this confidentiality obligation, Princeton University shall be entitled to equitable relief, including injunctive relief and specific performance, in addition to all other rights and remedies otherwise available. The rights and obligations of the parties under this paragraph shall survive any termination of any Release Order issued under this BOA and/or the BOA. At Princeton University's request, Professional Services Consultant and any of its Subconsultants and their employees or agents shall execute Princeton University's standard form of nondisclosure agreement.

(k) **Building Access.** The Professional Services Consultant 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).

(l) **Notice of Defects.** Notice shall be given by the Professional Services Consultant to Princeton University if the Professional Services Consultant becomes aware of any fault or defect in the Project for any individual Release Order or nonconformance with the Design Documents, including Construction Documents, or of any fault or defect with the Basic Services in any regards.

ARTICLE VIII – TERM OF BASIC ORDERING AGREEMENT

(a) The Effective Term of this BOA shall be for three (3) years starting **Month DD, YYYY** (Start Date) and ending **Month DD, YYYY** (End Date).

(b) The parties may agree to extend the Effective Term of this BOA for up to one (1) year beyond the BOA End Date. Extensions to the BOA Effective Term and any associated rate changes shall be incorporated by a BOA Amendment.

(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 End Date of the BOA. Notwithstanding such, the BOA shall remain open and in effect until all open Release Orders are completed and closed.

ARTICLE IX – COMPENSATION TO PROFESSIONAL SERVICES CONSULTANT

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

(1) **Hourly Rates.** Princeton University will compensate the Professional Services Consultant for direct Basic 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 Basic 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

Individual/Labor Category	Hourly Rate

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

"Subconsultant Mark-Up": TBD%

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

(b) **Reimbursable Expenses/Reimbursable Expenses NTE Amount.** As full compensation for the Professional Services Consultant's Reimbursable Expenses, the Professional Services Consultant will be reimbursed for actual expenses up to the Reimbursable Expenses NTE Amount 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 Release Order whether incurred directly by the Professional Services Consultant 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 Consultant'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 Professional Services 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 Consultant'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/Drawings, specifications/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.** For T&M type Release Orders, if at any time the Professional Services Consultant has reason to believe that the costs to be reimbursed for labor at the applicable hourly rates established in this BOA and any other costs approved under the Release Order to be incurred in performing the Basic Services of the Release Order 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 Consultant shall notify Princeton University giving a revised estimate of total expenses along with supporting reasons and documentation. For Fixed Price Release Orders, the obligations of this paragraph (c) shall apply to the Reimbursable Expenses NTE Amount.

(d) **Additional Services and Adjustments to the Fixed Price or NTE Price.** For Additional Services that are properly compensable pursuant and subject to the terms of Article XIV, Article XVIII(k), and other applicable terms of an individual Release Order and the BOA, Princeton University will, upon its written agreement thereto, compensate the Professional Services Consultant on an hourly basis, as set forth in the schedule of hourly rates established in this BOA, 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 the Professional Services Consultant perform any services in connection with any individual Release Order Project that the Professional Services Consultant believes are not included within its Basic Services for such, the Professional Services Consultant shall, in connection with Article XIV, promptly so inform Princeton University in writing and shall provide a fixed or not-to-exceed cost to Princeton University for providing such services.

The Professional Services Consultant shall not proceed with the Additional Services until it receives an express written authorization executed by Princeton University (i.e., a Release Order Amendment). However, if Princeton University, in good faith, concludes that the services in question are Basic Services and directs the Professional Services Consultant to proceed (i.e., a Disputed Additional Service), the Professional Services Consultant shall proceed without delay. Failure to so proceed shall constitute a material breach of this BOA; provided, however, that by so proceeding the Professional Services Consultant does not waive any Claim that it may appropriately have related to such services pursuant and subject to all applicable terms of the Release Order and the BOA.

(2) Notwithstanding anything elsewhere in the BOA to the contrary, in no event will the Professional Services Consultant be entitled to any increase in the Fixed Price or NTE Price, or any compensation for Additional Services, under this paragraph (d) unless the circumstances giving rise to any Claim for additional compensation necessitate the preparation of additional sketches, drawings/Drawings, or other documents, or the making of substantial changes in any document that has already been approved by Princeton University or upon which substantial services have already been performed, or other substantial services by the Professional Services Consultant.

ARTICLE X – INVOICES AND PAYMENTS

(a) Professional Services Consultant 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 Consultant 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 Consultant'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. Professional Services Consultant 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 (For T&M type Release Orders).** Monthly invoices shall include details supporting the hourly expenses being billed for Basic 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) **For Fixed Price Release Orders.** If not included as part of the Release Order, prior to commencing any Basic Services, and in all instances before submitting its first invoice, Professional Services Consultant shall furnish a breakdown of the total Fixed Price showing the amount included therein for each principal category of the Basic Services, in such detail as requested by Princeton University to provide the basis for determining progress payments. Thereafter, Professional Services Consultant shall invoice on a monthly basis for the Basic Services completed during that month based on such breakdown, subject to Princeton University's approval of same. At Princeton University's option, Professional Services Consultant may, in lieu of the preceding, invoice as provided in paragraph (b)(1) above (i.e., hourly expenses) subject to the Fixed Price.

- (3) **Subconsultant Expenses.** Professional Services Consultant 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.
- (4) **Reimbursable Expenses.** The Professional Services Consultant 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.
- (5) **Additional Services.** The Professional Services Consultant shall separately account and invoice for Additional Services under any Release Orders where such Additional Services have been authorized pursuant to Article IX(d), Article XIV and Article XVIII(k) of this BOA and other applicable provisions of the BOA. For Additional Services authorized to be performed on an hourly basis, Architect/Engineer shall include actual amounts incurred during the billing month and shall submit detailed backup to support and substantiate the amount being billed, including copies of employee-signed and supervisor-approved time sheets. For Additional Services for which a Fixed Price has been established, the Professional Services Consultant shall bill as it would for a Fixed Price Release Order as described in Article X(b)(2). In no event will amounts be paid that are in excess of any maximum or fixed price established for the Additional Services or that are based on hourly rates that are not in accordance with the hourly rate schedule established in Article IX(a)(1).
- (c) In no event shall amounts in excess of the Fixed Price or the NTE Price, or the Reimbursable Expenses NTE Amount established on a Release Order be paid by Princeton University except as may be agreed by Princeton University in any properly authorized and signed Release Order Amendment.
- (d) Payments will be made to the Professional Services Consultant within 30 days after receipt by the Princeton University Administrative Representative and Project Manager 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 Representative and Project Manager designated for the Release Order.
- (e) Prior to final payment to the Professional Services Consultant, the Professional Services Consultant shall furnish evidence satisfactory to Princeton University that there are no Claims (as defined in Article XVII(a)) and/or other claims, obligations or liens outstanding in connection with its Basic Services. Acceptance of final payment shall constitute a waiver of any and all Claims or potential Claims by the Professional Services Consultant, including, without limitation, those for compensation for its Basic Services and/or Additional Services.
- (f) **Records.** The Professional Services Consultant shall maintain records for all reimbursable expenses and for services performed on an hourly basis in accordance with generally accepted accounting principles. Records pertaining to all Release Orders issued under this BOA 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 Consultant shall retain all records relating to this BOA until the expiration of ten (10) years after final payment is made under the last Release Order issued 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 Consultant 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 Basic Services under a Release Order the Professional Services Consultant 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 Consultant 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 Consultants 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

(b) 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 Consultant for a Project or under this BOA. The Professional Services Consultant 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 Consultant is not relieved of any liability or other obligations assumed or pursuant to any Release Orders issued under this BOA by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The specification of any minimum limits of insurance in this BOA shall not act as any limitation on Princeton University’s ability to recover the full amount of available insurance proceeds maintained by the Professional Services Consultant, and the Professional Services Consultant shall have an obligation to ensure that its insurance policies contain no such restriction.

(1) Acceptance and/or approval by Princeton University of the insurances herein shall not be construed to relieve the Professional Services Consultant from any obligations, responsibilities or liabilities under any Release Orders issued under this BOA. Princeton University, by requiring the Professional Services Consultant to purchase insurance, shall not be deemed to have waived Princeton University’s right to bring any action, to the fullest extent permitted by law, for any loss that may be covered, completely or in part, by that insurance. Nor shall the fact that insurance is obtained for certain risk be deemed to release, relieve or diminish the liability of the Professional Services Consultant. The damages recoverable by Princeton University in any Claim (as defined in Article XVII(a)) and/or other claim or action shall not be limited by the amount of coverage

specified in any insurance policy or policies but shall be the total amount of damages recoverable as set forth in the BOA or at law, whichever is greater.

(c) If requested in writing, the Professional Services Consultant shall provide certified, full and correct copies of any of its insurance policies required by this BOA, including, without limitation, its professional liability insurance policy or policies and/or those of its subconsultants, within three (3) days following demand therefore.

(d) Insurance shall be provided at the Professional Services Consultant's expense as part of the Fixed Price or the NTE Price, and within the hourly rates per the hourly rate schedule in Article IX(a)(1), for Basic Services and shall not be charged directly to Princeton University as a Reimbursable Expense.

(e) 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*.

(f) Except for professional liability insurance and Worker's Compensation insurance, the Professional Services Consultant shall name "The Trustees of Princeton University, its Officers, Employees and Agents," as additional insureds in the insurance policies required in paragraph (a) with respect to any liability resulting from or in any way connected with any activity provided for under any Release Order issued under this BOA. Except for professional liability insurance, all insurance coverage shall be primary and non-contributing as to any other valid and collectible insurance, including any deductible, of Princeton University, the policies shall be occurrence-based, and shall contain a Waiver of Subrogation in favor of Princeton University, so that in no event shall the insurance carriers have any right of recovery against Princeton University or any additional insureds, their agents or employees; and shall contain a separation of insured provision (severability of interest clause). If Princeton University has other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. To the extent that Princeton University requires the Professional Services Consultant to designate any person or entity not listed herein as additional insured, such person or entity also shall be named as additional insured on the policies procured by the Professional Services Consultant.

(g) In the event that any of the insurance coverage to be provided by the Professional Services Consultant contains a deductible or self-insured retention, the Professional Services Consultant shall indemnify and hold Princeton University, and any additional insured harmless from the payment of such deductible, which deductible shall in all circumstances remain the sole obligation and expense of the Professional Services Consultant.

(h) 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 final payment to the Professional Services Consultant on the last Release Order Project under this BOA. The Princeton University Administrative Representative shall be notified by the Professional Services Consultant or its insurance carrier at least 30 days prior to any material change to or cancellation of any of insurance coverage.

(i) Upon execution of this BOA and prior to beginning Basic Services under a Release Order, the Professional Services Consultant 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 and any and all other endorsements or riders thereto (all in form and substance reasonably satisfactory to Princeton University). Each COI shall set forth the type and amount of insurance, the number of the policy, the date coverage under the policy begins and the date that coverage expires. The COI shall be submitted to Princeton University for review and acceptance. For the duration of the BOA, the Professional Services Consultant or its broker/insurance carrier shall provide

updated COI's to evidence renewals or other changes to insurance policies or coverage. At the point of final payment to the Professional Services Consultant on the last Release Order Project under this BOA, 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 final payment to the Professional Services Consultant on the last Release Order Project under this BOA.

(j) The Professional Services Consultant shall require all of its subconsultants to maintain the insurance required by this BOA, including, without limitation, professional liability insurance where applicable, with the same coverage as set forth above for the Professional Services Consultant and in accordance with the same terms and conditions as required of the Professional Services Consultant. The Professional Services Consultant shall certify to Princeton University that its subconsultants are in compliance with the insurance requirements under this BOA. Princeton University must approve, in writing, any insurance coverage for a subconsultant in an amount less than required. Such approval is at Princeton University's sole discretion. Subconsultant insurance certificates and certified complete copies of insurance policies shall be provided upon request by Princeton University. Failure to adhere to these requirements will be considered a material breach of this BOA.

(k) **Indemnification -**

(1) To the fullest extent permitted by the laws of the State of New Jersey, and subject to paragraph (k)(2) below, the Professional Services Consultant (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 (as defined in Article XVII(a)), claims, suits, actions, losses, liabilities, damages, costs and expenses, including reasonable attorneys' fees (including, without limitation, those attorneys' fees incurred in any appeals, or any enforcement of the obligations under this provision, or enforcement of any judgment and collection hereunder) ("Claims & Losses"), of every nature and kind, that are alleged to have occurred, result in any way from, arise out of, or relate to, in whole or in part, the negligent acts or omissions of the Indemnitor, its agents, consultants, subconsultants, employees, or representatives, or anyone for whose acts the Indemnitor or any of the preceding are legally liable, with regard to the Basic Services, services and other activities, including professional services, and other obligations under any Release Order issued in connection with this BOA, regardless of whether such Claims & Losses are caused in part by the negligence or other fault of any of the Indemnitees; provided, however, that the defense, indemnification and hold harmless obligations hereunder shall not apply if such Claims & Losses are caused by the sole negligence of any of the Indemnitees. Notwithstanding anything in this paragraph (k)(1) to the contrary, for Claims & Losses related to the Professional Services Consultant's alleged failure to meet its Professional Standard, the Professional Services Consultant shall have no duty or right to defend Princeton University against such, but shall be obligated to indemnify Princeton University for reasonable attorneys' fees incurred by Princeton University in such defense to the extent provided herein above.

(2) Only with regard to Claims & Losses related to the Professional Services Consultant's alleged failure to meet its Professional Standard, and only in the limited circumstances where the negligent acts or omissions of an Indemnitee materially contribute to the performance or nonperformance by the Indemnitor, or its agents, subconsultants, employees, or representatives that gives rise to Indemnitor's liability for any Claims & Losses under paragraph (k)(1) above or otherwise materially concurrently causes any such Claims & Losses, the Indemnitor's indemnity and hold harmless obligations shall be adjusted to reflect Indemnitees' material contribution or

concurrent causation, with the Indemnitor retaining proportional liability for indemnification as otherwise required by this paragraph (k) and its subparts consistent with that adjustment. For the purpose of this paragraph (k)(2), the term 'materially' shall mean that the ultimate finder of fact in any court authorized to make such determination under this BOA has determined that the Indemnitees' negligent contribution to Indemnitor's (or others' for whom it is responsible) performance or nonperformance or negligent concurrent cause of the relevant Claims & Losses exceeds 50% as a causal factor. Additionally, it is an express condition precedent for Indemnitor to avail itself of any potential rights for adjustment of its paragraph (k)(1) indemnity and hold harmless liability pursuant to this paragraph (k)(2), that Indemnitor must deliver to the Indemnitees reasonably timely written notice of Indemnitor's good faith, reasonably detailed factual basis for its Claim for adjustment of its indemnity and hold harmless liability pursuant to this paragraph (k)(2), and proposed adjustment based upon percentages or any other method of allocation that is appropriate under the circumstances. So that Princeton University can properly investigate any Indemnitor Claim for adjustment of its indemnity and hold harmless obligations pursuant to this paragraph (k)(2), time is of the essence with respect to giving Princeton University written notice as provided herein, and, if the Indemnitor's written notice required hereunder is not delivered within the required time or with the information required by this provision, the Indemnitor shall have expressly waived any Claim or right to any adjustment to its paragraph (k)(1) indemnity and hold harmless liability.

(3) Survival. The defense, indemnification and hold harmless obligations in this paragraph (k) and its subparts shall survive the term or completion or termination of this BOA and any individual Release Orders issued under the BOA, and/or the BOA itself.

ARTICLE XIII – OWNERSHIP AND USE OF DOCUMENTS

(a) **Authorship and Copyright; Perpetual, World-Wide, Royalty-Fee, Non-Revocable, Exclusive License to Use.** The original Design Documents, including drawings/Drawings, specifications/Specifications and all other documents and deliverables prepared by the Professional Services Consultant as part of its Basic Services or otherwise with respect to any Release Order Project are instruments of the Professional Services Consultant's service. Unless otherwise provided, the Professional Services Consultant 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 Consultant agrees to and does hereby grant Princeton University a perpetual royalty-free, non-revocable, exclusive license ("License"), and, pursuant and subject to paragraph (g) below, shall transfer full ownership and all other rights, to all such Design Documents and other property in which the Professional Services Consultant (and/or its subconsultants, or any of the agents, representatives, and/or assigns of any of them) may claim a copyright, and to all architectural work as to which the Professional Services Consultant (and/or its subconsultants, or any of the agents, representatives, and/or assigns of any of them) may assert any rights or establish any claim under the design patent or copyright laws or other laws. Princeton University's License (and ultimately, Professional Services Consultant's transfer of full ownership and all other rights pursuant and subject to paragraph (g) below) shall entitle Princeton University to unlimited rights in all architectural works, and all Design Documents, and all documents arising out of the Professional Services Consultant's performance of its Basic Services pursuant to any Release Order issued under this BOA, so long as its use thereof is consistent with Princeton University's purpose, as set forth in its Charter. This License (and ultimately, Professional Services Consultant's transfer of full ownership and all other rights pursuant and subject to paragraph (g) below) shall include, but not be limited to, Design Documents, drawings/Drawings, specifications/Specifications, architectural designs of buildings and structures, notes and other architectural and engineering documents produced

by or on behalf of Professional Services Consultant in the performance of any Release Order issued under this BOA, or in contemplation thereof, archive drawings and archive specifications produced both before and/or after completion of Basic Services (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).

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

(c) In the event that any Release Order under this BOA is terminated for any reason pursuant to Article XV hereof or a Release Order is suspended or terminated pursuant to Article XVI, Professional Services Consultant shall remain responsible for all signed and sealed Construction Documents prepared by Professional Services Consultant or its subconsultants, except to the extent that such documents are modified or misused by Princeton University, or its contractors, or any replacement architect following termination of a Release Order and/or the BOA. To the fullest extent permitted by law, Princeton University shall defend, indemnify and hold the Professional Services Consultant harmless from and against all liability, loss, damages, costs and expenses, that it may sustain or incur by reason of: (a) any use of the Design Documents for an individual Release Order Project if the Release Order for that Project is terminated before completion of Construction Documents on that Project; or (b) after completion of Construction Documents on that Release Order Project, any revision or addition to, alteration or deviation from or misuse of the Professional Services Consultant’s Construction Documents on that Project by anyone other than the Professional Services Consultant occurring after the completion or termination of the Professional Services Consultant’s services under the Release Order for that Project.

(1) In instances where paragraph (c) is not relevant to the Basic Services provided by Professional Services Consultant, Professional Services Consultant shall remain responsible for any Design Documents or other documents or deliverables provided as part of its Basic Services except to the extent that such documents are modified or misused by Princeton University, or its contractors, or any replacement architect following the completion or termination of the Professional Services Consultant’s Basic Services under a Release Order. To the fullest extent permitted by law, Princeton University shall defend, indemnify and hold the Professional Services Consultant harmless from and against all liability, loss, damages, costs and expenses, that it may sustain or incur by reason of any revision or addition to, alteration or deviation from or misuse of the Professional Services Consultant’s Design Documents or documents or other deliverables by anyone other than the Professional Services Consultant occurring after the completion or the termination of the Professional Services Consultant’s Basic Services under a Release Order.

(d) Notwithstanding the License and/or Professional Services Consultant’s transfer to Princeton University of full ownership and all other rights to Professional Services Consultant’s Design Documents and other documents, architectural work, and information and property relating to any Release Order issued under this BOA pursuant and subject to paragraph (g) below, the Professional Services Consultant shall be permitted to reuse individual elements of the design resulting from these Basic Services on other projects; provided, however, that the Professional Services Consultant 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 immediately upon their creation become property of Princeton University at no additional cost to Princeton University.

(f) Nothing in this Article shall be construed to limit or constrain Princeton University's use of documents in which the Professional Services Consultant may claim a copyright as permitted under the "Fair Use" doctrine of the United States Copyright Act, 17-U.S.C. § 1 et seq.

(g) **Princeton University Ownership and all Rights to Design, Copyright, Architectural Work, and Documents.** Following completion or termination of any Release Order issued under this BOA (and if terminated, whether terminated for Professional Services Consultant's default or for Princeton University's convenience pursuant to Article XV hereof, and/or following termination of a Release Order as provided in Article XVI hereof), and Princeton University's payment to Professional Services Consultant of amounts owed for Basic Services and Additional Services pursuant and subject to the terms of this BOA, Professional Services Consultant, on behalf of itself and its subconsultants and any agents, representatives, and assigns of any of them, hereby permanently and irrevocably transfers to Princeton University all ownership and any other rights whatsoever to all property that is subject to the License pursuant to paragraph (a) above, including, without limitation, all common law, statutory and other reserved rights, including copyrights. Professional Services Consultant further agrees to execute any documents necessary or reasonably required by Princeton University to effect or otherwise acknowledge such transfer.

(h) If Professional Services Consultant terminates any Release Order or this BOA for Princeton University's default pursuant to Article XV hereof, it is expressly agreed that the License shall continue on a perpetual, world-wide, royalty-free, non-revocable, and exclusive basis, subject to paragraph (c) above, and with the further express agreement that such termination by Professional Services Consultant shall have no effect or limitation on Professional Services Consultant's obligations under paragraph (b) above.

(i) Professional Services Consultant shall ensure that each of its agreements with its subconsultants shall contain the same provisions contained in this Article XIII for the benefit of Princeton University, including, without limitation, that each subconsultant shall provide the same License and ultimate transfer of full ownership of all instruments of service, Design Documents and other documents and deliverables and information with respect to any Release Order Project to Princeton University as provided herein.

(j) The terms and conditions and rights and obligations of this Article XIII shall survive the term or completion or termination of any Release Order under this BOA and/or the BOA itself.

ARTICLE XIV – ADDITIONAL SERVICES AND REDUCTION OF SERVICES

(a) **Additional Services.** In addition to the Professional Services Consultant's Basic Services, after issuance of an individual Release Order without invalidating the Release Order or this BOA, if required, the Professional Services Consultant shall perform additional services beyond the scope of the Basic Services ("Additional Services"). The Professional Services Consultant may be compensated for the performance of Additional Services in addition to the Fixed Price or NTE Price for any individual Release Order only if such Additional Services are required and/or performed through no fault of the Professional Services Consultant and only upon strict compliance with and subject to the terms of this Article XIV, Article IX, Article XVIII(k), and other applicable terms of the BOA. So that Princeton University may investigate and mitigate any related impacts, as a condition precedent for the Professional Services Consultant to make a Claim (as defined in Article XVII(a)) and/or other claim for compensation for the

performance of Additional Services in addition to the Fixed Price or NTE Price for a Release Order, before performing any Additional Services, the Professional Services Consultant shall provide written notice to Princeton University of such, along with the fixed or not-to-exceed costs for performing such services and may only be compensated as set forth in this Article XIV, Article IX, and Article XVIII(k) of the BOA as agreed by Princeton University in writing. If the parties disagree in good-faith whether a service is a Basic Service or an Additional Service, and Princeton University directs the Professional Services Consultant to proceed with the service as part of its Basic Services, the Professional Services Consultant shall proceed with the services as such, subject to resolution pursuant and subject to the provisions of Article XVII and any other relevant terms of this BOA ("Disputed Additional Service"). If the Professional Services Consultant performs Additional Services without providing advance written notice to Princeton University along with the other information as required herein, the Professional Services Consultant acknowledges that it does so at its own risk and shall not be entitled to payment or make any Claim (as defined in Article XVII(a)) and/or other claim for payment for such Additional Services (whether or not said services are identified in this BOA or any Release Order as Additional Services) and such services shall instead be deemed provided as Basic Services (and included within such defined term) and compensated as such with no change to the Fixed Price or NTE Price for any Release Order. Princeton University is under no obligation to pay the Professional Services Consultant for any Additional Services unless or until the parties execute an appropriate Release Order Amendment. If or once accepted and agreed in a writing signed by Princeton University as a Release Order Amendment for Additional Services, Additional Services provided by the Professional Services Consultant shall be subject to all relevant terms and conditions in the Release Order and this BOA and the BOA Documents pertaining to Basic Services as only modified by such Release Order Amendment.

(b) Without limitation to paragraph (a) and notwithstanding anything to the contrary expressed elsewhere in this BOA or any Release Order, no services by or through the Professional Services Consultant made necessary by or resulting from or relating to, in whole or in part, any fault of or negligent act or error or omission of, or breach of any obligation or term of the this BOA or any Release Order by, the Professional Services Consultant under this BOA or any individual Release Order, shall be compensated as an Additional Service under any individual Release Order or this BOA.

(c) **Reduction in Services.** In addition, if at any time during the term of performance of any individual Release Order Princeton University should request the Professional Services Consultant to reduce the scope of Basic Services originally agreed upon under the Release Order, the Professional Services Consultant shall then reduce said scope of Basic Services, as requested, and the Fixed Price or NTE Price shall be reduced by a fair and equitable amount.

ARTICLE XV – TERMINATION

(a) **Termination of Release Orders and/or the BOA for Professional Services Consultant's Default.**

(1) **Grounds.** If the Professional Services Consultant fails to perform any of its material duties under the BOA or a Release Order issued under the BOA, in a timely fashion, for reasons not due to the fault of Princeton University, any of Princeton University's contractors or any of their subcontractors, or otherwise materially breaches the BOA or any Release Order in any way, Princeton University may terminate the BOA or any individual Release Order for default. Without limitation, termination for default will be permitted if the Professional Services Consultant fails to make prompt payment to subconsultants; fails to promptly and properly correct any errors, omissions or other deficiencies in the Design Documents or other documents or deliverables prepared by Professional Services Consultant upon receiving notice from Princeton University or otherwise becoming aware of such; 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 Consultant does not have the technical or financial ability to complete its obligations under the BOA or any Release Order and Professional Services Consultant fails to give Princeton University prompt and reasonable assurances of its ability to perform satisfactory to Princeton University in its discretion. Upon such termination for default, the Professional Services Consultant shall be liable to Princeton University for all loss, cost or expense reasonably incurred by Princeton University as a result of such termination, including Claims (as defined in Article XVII(a)) and/or other claims attributable to any costs incurred by Princeton University to complete the remaining obligations of the Professional Services Consultant under the terminated Release Order and/or this BOA.

(2) **Notice and Effective Date.** Princeton University shall notify Professional Services Consultant, in writing, of a termination for default, and the reasons prompting it. Unless expressly provided otherwise in the notice of termination for default, the termination shall be effective upon the date specified in such written notice, without any opportunity provided for Professional Services Consultant to cure any such default.

(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 Consultant. Neither termination of the BOA or any Release Order nor any payment to Professional Services Consultant shall limit or impair the right of Princeton University to recover damages occasioned by the fault or default of Professional Services Consultant.

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

(b) **Termination for Convenience.** Princeton University may terminate the BOA or a Release Order issued under the BOA, without declaring Professional Services Consultant in default, with or without cause, by providing Professional Services Consultant with thirty (30) calendar days' written notice of termination for convenience at any time.

(c) If the Professional Services Consultant is a sole proprietor and the Professional Services Consultant should die during the term of this BOA, this BOA shall be considered terminated. In the event of such termination, the Professional Services Consultant's estate shall be entitled to reasonable payment for any uncompensated Basic Services and agreed upon and approved Additional Services pursuant to any Release Order Amendment 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 Design Documents and/or other documents and/or deliverables prepared under any Release Orders issued pursuant to this BOA, as if any open Release Order Projects and this BOA had been terminated for the convenience of Princeton University pursuant to paragraph (b).

(d) **Deliverables and Compensation.** In the event of termination of any Release Order and/or this BOA, whether by Princeton University under paragraph (a) or (b) above or by Professional Services Consultant under paragraph (e) below, or a suspension of any Release Order by Princeton University or later termination of any Release Order by the Professional Services Consultant under Article XVI(c), Professional Services Consultant shall promptly deliver to Princeton University upon written notice all

records, Design Documents, documents, working papers, calculations, computer programs, data, Drawings/drawings, plans, Specifications/specifications, and other deliverables and tangible work product and all equipment, materials, items or objects acquired or created or produced by Professional Services Consultant pertaining to the Basic Services performed under the subject Release Order and/or this BOA to the time of suspension or termination; provided that Princeton University has paid to Professional Services Consultant all amounts due and owing as of the date of suspension or termination, exclusive of amounts disputed in good faith by Princeton University. In addition, with regard to compensation on termination:

(1) If termination is under paragraph (a) for default, Professional Services Consultant will be paid pursuant to any Release Order only for Basic Services compensation corresponding to the Basic Services actually completed by Professional Services Consultant as of the date of termination (as such amount is calculated under this BOA and the relevant individual Release Order), together with compensation for any appropriately approved Additional Services properly performed and actually completed as of the date of termination, and actual Reimbursable Expenses incurred through the date of termination, not yet paid, 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 re-procurement costs incurred to complete the remaining obligations of Professional Services Consultant under the terminated Release Order and/or this BOA, and if all such Claims exceed the amount of compensation due, Professional Services Consultant shall pay upon demand such excess to Princeton University. In calculating the amount due to Professional Services Consultant as provided herein, the compensation for Basic Services completed shall be as provided in the relevant Release Order and this BOA. The payment of these amounts is Professional Services Consultant's sole remedy for termination. In no event shall Professional Services Consultant be entitled to recover any amounts for any unperformed or terminated services which have not or will not be performed, including, without limitation, no compensation for profits or overhead on portions of the services (Basic Services and Additional Services) not performed as of the effective date of termination. Additionally, compensation shall in no case exceed the limits established in any Release Order for any Basic Services (as may only have been amended by an authorized Release Order Amendment) as to which Princeton University has expressly authorized Professional Services Consultant to proceed.

(2) If termination is under paragraph (b) for Princeton University's convenience (or is converted from a default termination to a termination for convenience pursuant to paragraph (a)(4) above) or is under paragraph (e) for Princeton University's default or is under Article XVI(c)(1), Professional Services Consultant shall be paid only for Basic Services compensation corresponding to the the Basic Services actually completed by Professional Services Consultant as of the date of the termination (as such amount is calculated under this BOA and the relevant individual Release Order), together with compensation for any appropriately approved Additional Services properly performed and actually completed as of the date of termination, and actual Reimbursable Expenses incurred through the date of termination, not yet paid. In calculating the amount due to Professional Services Consultant as provided herein, the compensation for Basic Services completed shall be as provided in the relevant Release Order and this BOA. The payment of these amounts is Professional Services Consultant's sole remedy for termination for convenience (and other terminations covered by this provision). In no event shall Professional Services Consultant be entitled to recover any additional amounts for any unperformed or terminated services which have not or will not be performed, including, without limitation, no compensation for profits or overhead on portions of the services (Basic Services and Additional Services) not performed as of the effective date of termination. Compensation shall in no case

exceed any limits established in any Release Order for any Basic Services (as may only have been amended by an authorized Release Order Amendment) as to which Princeton University has expressly authorized Professional Services Consultant to proceed, plus reasonable expenses arising from and limited to Professional Services Consultant's demobilization of staff as a direct result of termination of any Release Order and/or this BOA.

(e) **Termination for Princeton University's Default.** If Princeton University fails to make payments to Professional Services Consultant in accordance with this BOA for any Release Order, exclusive of payments disputed by Princeton University in good faith, such failure shall be considered substantial nonperformance and cause for termination of the subject Release Order, or, at Professional Services Consultants option, cause for suspension of performance of Basic Services under the subject Release Order. If Professional Services Consultant elects to suspend Basic Services, prior to suspension of Basic Services, Professional Services Consultant shall give seven (7) days' written notice to Princeton University. In the event of a proper suspension of Basic Services, Professional Services Consultant shall have no liability to Princeton University for delay or damage caused Princeton University because of such suspension of Basic Services. Before resuming Basic Services, Professional Services Consultant shall be paid all sums due, except amounts disputed by Princeton University in good faith, prior to suspension and any reasonable expenses incurred in the interruption and resumption of Professional Services Consultant Basic Services. Professional Services Consultant's Fixed Price or NTE Price for the remaining Basic Services and the time schedules shall be equitably adjusted. If Professional Services Consultant elects to terminate any Release Order for nonpayment on such Release Order or other material breach of the BOA with regard to any Release Order, the Professional Services Consultant 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 unreasonable to cure such default within ten (10) days provided that Princeton University gives Professional Services Consultant 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 Consultant delivers to Princeton University a written revocation of the termination.

ARTICLE XVI – RELEASE ORDER SUSPENSION

(a) Princeton University, at any time, upon three (3) days written notice to the Professional Services Consultant may suspend all or any part of the Basic Services of the Professional Services Consultant under any Release Order.

(b) In the event of suspension of a Release Order by Princeton University, the Professional Services Consultant shall be entitled to receive reasonable compensation for Basic Services (and Additional Services pursuant to any agreed and approved Release Order Amendment) already satisfactorily performed and accepted through the date of suspension, but no amount shall be allowed for anticipated profit on unperformed Basic Services (and/or Additional Services) or otherwise.

(c) Princeton University shall have the right to reactivate Professional Services Consultant's performance of Basic Services (and Additional Services pursuant to any agreed and approved Release Order Amendment) under any Release Order previously suspended, in whole or in part, at any time within 120 consecutive days from the time all or part of the Release Order was suspended, without any change to the Fixed Price or NTE Price. In the event of such reactivation, should Professional Services Consultant fail or refuse to promptly recommence its performance under the subject Release Order and this BOA for the previously suspended Release Order Project without increase to the Fixed Price or NTE Price,

Professional Services Consultant shall be deemed to have failed to perform a material duty under this BOA for the purpose of Article XV(a), allowing Princeton University to terminate the Release Order and/or the BOA for default.

(1) If Princeton University fails to reactivate Professional Services Consultant's performance under the subject Release Order for a suspended Release Order Project by written notice prior to the completion of one hundred twenty (120) consecutive days from the time all or any part of the Release Order was suspended under this Article XVI, the Professional Services Consultant shall have the right to terminate that Release Order for its convenience and be compensated only as provided in Article XV(d)(2), or may renegotiate the Fixed Price or NTE Price with Princeton University based on current conditions as it pertains to the remaining Basic Services (and Additional Services, if any) subject to all other terms and conditions of the BOA.

(d) In the event Princeton University decides to suspend any work under any Release Order under this BOA, Princeton University shall remain entitled to unlimited access to all finished and unfinished documents prepared by the Professional Services Consultant pursuant to this BOA and shall be vested with all rights to such documents as set forth in Articles XIII and XV.

ARTICLE XVII – DISPUTE RESOLUTION

(a) A "Claim" is any claim, controversy or dispute between Princeton University and the Professional Services Consultant concerning the interpretation of any Release Order, the BOA, the performance of any portion of the Professional Services Consultant services (Basic Services and/or Additional Services), or any other matter arising under or relating to any Release Order issued under this BOA or the BOA itself, or the breach thereof. The responsibility to substantiate Claims shall rest with the party making the Claim.

(b) If the Professional Services Consultant wishes to assert any Claim against Princeton University, the Professional Services Consultant shall first, as a condition precedent to commencing litigation against Princeton University arising out of or relating to such Claim, provide written notice to Princeton University and otherwise comply with the terms of this Article XVII. After the Professional Services Consultant provides written notice of a Claim to Princeton University as provided in this paragraph (b), the parties shall promptly thereafter confer and exert efforts in good faith to reach a reasonable resolution of the issue.

(1) Thereafter, if the parties are unable to resolve the Claim, within fifteen (15) business days after the initial notice under paragraph (b) (or such longer time agreed to in writing by both parties), they shall, upon demand by either party, within ten (10) business days thereafter (or such longer time agreed to in writing by both parties), agree upon and retain (with expenses to be borne equally by the parties) a neutral individual to act as a non-binding 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 non-binding mediation shall be conducted within sixty (60) days of the appointment of the mediator (unless the parties agree in writing to a later date), and shall be conducted confidentially in an effort to settle the Claim, with the express understanding that the mediation is non-binding on both parties unless a mutually agreed settlement is reached and agreed to in writing by both parties as a result of such mediation.

(2) Thereafter, if the Claim is not settled by mutual agreement as provided above within ten (10) business days after the first day of mediation (or such longer time agreed to in writing 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. The Professional Services Consultant agrees to the sole and exclusive jurisdiction

of the preceding two courts and may not initiate litigation in any other forum. It is expressly agreed and understood that in all circumstances the Professional Services Consultant shall not have any right to initiate litigation against Princeton University with regard to any Claims against Princeton University without first utilizing the process set forth in this Article XVII. To the extent permitted by law, the parties agree that they will agree to and take action necessary to toll any statute of limitations applicable to any Claim from the date that such notice is sent under paragraph (b) above until the first day upon which the parties are permitted to initiate litigation as set forth in this subparagraph (2), but only if such initial notice sent under paragraph (b) above was timely under the applicable statute of limitation or any shorter time required by this BOA for the Professional Services Consultant to commence such Claim in the first instance.

(c) The Professional Services Consultant agrees that the requirements of this Article XVII shall be included in all of its agreements with subconsultants so that all subconsultants shall be bound to engage in the procedures and otherwise be subject to the terms of this Article XVII as they may respectively apply to any Claim or other claim, controversy or dispute involving any subconsultant with regard to any Project, including, without limitation: any subconsultant claims, controversies or disputes with the Professional Services Consultant; any Professional Services Consultant claims, controversies or disputes with any subconsultant(s); any Princeton University claims, controversies or disputes with any subconsultants; and/or any claims, controversies or disputes where joinder of any subconsultant may be necessary or beneficial (as determined by Princeton University) for mediation or litigation of said claim, controversy or dispute. In the event of any such a claim, controversy or dispute involving any of the Professional Services Consultant's subconsultants, without limitation, the procedure set forth above (and Princeton University's exemption from such as provided in paragraph (e) directly below) 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.) Additionally, any claim, controversy or dispute solely between or among the Professional Services Consultant and any subconsultant(s) for which any of them provides the other with written notice to demand mediation as provided in Article XVII (b)(1), a copy of such notice and all subsequent notices shall be provided to Princeton University.

(d) The Professional Services Consultant 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 the Professional Services Consultant relating to the Project; and (ii) to the joinder of one or more third parties in any mediation or litigation between Princeton University and the Professional Services Consultant where such mediation or litigation gives rise to any claim, controversy, or dispute between Princeton University and any such third parties.

(e) Notwithstanding anything in this Article XVII or elsewhere in this Contract to the contrary, it is expressly agreed that Princeton University is not bound to the written notice and other procedures set forth in the above paragraph (b) and subparagraphs (b)(1), and (b)(2). Further, Princeton University is not subject to any limitation whatsoever on its ability to commence litigation pursuant to the above paragraph (b) and subparagraphs (b)(1), and (b)(2) (which only apply to and bind the Professional Services Consultant), with regard to any Claim relating to any Release Order and/or this BOA or any other claim, controversy or dispute relating to any Release Order Project, for which such Claims Princeton University may initiate or commence litigation at any time subject only to applicable law. To the extent, however, that Princeton University wishes to assert any Claim against the Professional Services Consultant or any claim, controversy or dispute against any of the Professional Services Consultant's subconsultants pursuant to the procedures provided in the above paragraph (b), and subparagraphs (b)(1) and (b)(2), Princeton University may voluntarily do so at its sole discretion upon written notice to

the Professional Services Consultant and the respective subconsultant(s) that Princeton University is invoking said procedures, which shall then be binding upon the Professional Services Consultant and any respective subconsultants, but, even in such instance, Princeton University shall have the right at all times to immediately, and without condition, commence litigation with regard to any Claim it may have against the Professional Services Consultant and/or any claim, controversy or dispute against any of the Professional Services Consultant's subconsultants notwithstanding the procedures set forth in the above paragraph (b), and subparagraphs (b)(1), and (b)(2), and notwithstanding whether such procedures have been invoked by Princeton University at some earlier time and notwithstanding whether such procedures have been previously invoked by the Professional Services Consultant.

(1) It is further expressly understood that, without limitation, this paragraph (e) and its subparts shall likewise apply to any and all claims, controversies or disputes that Princeton University may have against any of the Professional Services Consultant's subconsultants as a third-party beneficiary of such subconsultant agreement/contract.

(f) Pending final resolution of any Claim, (i) the Professional Services Consultant shall proceed diligently with the performance of its obligations under any Release Orders issued 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 Release Order and the BOA of all undisputed amounts.

ARTICLE XVIII – MISCELLANEOUS

(a) **Independent Contractor.** In performing hereunder, Professional Service Consultant 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 Consultant in connection with this BOA are so furnished or retained as Professional Service Consultant's employees or agents. Professional Service Consultant 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 Consultant 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 Consultant or its employees, agents, subconsultants or representatives. Professional Service Consultant agrees to report and pay all applicable taxes. Professional Service Consultant 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 Claim) or finding that Professional Service Consultant 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 shall be deemed to have been given or delivered: (1) if delivered by hand during business hours addressed to the party to be notified and against a signed receipt of the party to be notified, upon delivery; (2) if depositing the same in any international and reputable service system for overnight delivery addressed to the party to be notified, one (1) business day following deposit (with receipt of such deposit); (3) if delivered by email, to the email address of the party to be notified, upon the sending of such email if during business hours, and if after business hours, on the next business day; (4) if delivered by US certified mail, return receipt requested to the party to be notified upon four (4) business days after it is posted with the United States Postal Service. All notices to be given to either party shall be given to the representative identified in such provision to receive such notice (or as specified elsewhere in the Contract for such) with a copy to the Princeton

University or Professional Service Consultant Administrative Representative identified in the BOA in one of the manners provided herein for such notice at the physical and/or email addresses for such representatives as identified in the BOA. Additionally, Professional Service Consultant notices to Princeton University shall also be copied to the Princeton University Office of General Counsel (at the following address - Office of the General Counsel, Princeton University, New South Building, Fourth Floor, Princeton, NJ 08544) with regard to the following: any notice in connection with Article XVII (b), (b)(1) and (b)(2). Written notice from Professional Service Consultant shall further be deemed only given or made on the latest date upon which all appropriate Princeton University representatives (including the OGC when required) have been provided such notice as required herein. Notwithstanding anything in the BOA or elsewhere in the BOA Documents to the contrary, the uploading or posting or alteration or other action of or to a document on or at the Capital Project Management System (CPMS) by Professional Service Consultant shall not under any circumstances be deemed written notice to Princeton University pursuant to this Article XVIII(b). The parties shall have the right to change their respective individual representatives and addresses for receipt of notices hereunder by written notice to the other specifying the new individual representative or address.

(c) **Rights and Remedies.** Princeton University's review, approval, acceptance or payment for Basic Services under this BOA shall not operate as a waiver of any rights under this BOA and Professional Services Consultant shall be and remain liable to Princeton University for all damages incurred by Princeton University as the result of Professional Services Consultant'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. Additionally, the duties and obligations imposed upon the Professional Services Consultant, as set forth in this BOA shall be in addition to and not a limitation upon any other duties and obligations imposed upon the Professional Services Consultant by law or in equity. The rights and remedies of Princeton University set forth in this BOA shall not give rise to any duty on the part of Princeton University to exercise any such rights or remedies for its own benefit or for the benefit of Professional Services Consultant or any other person or entity.

(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. Notwithstanding the preceding the parties acknowledge and agree that Princeton University is an intended express third-party beneficiary of all Professional Services Consultant's contracts with subconsultants relating to any Release Orders issued under this BOA as more fully set forth in the BOA.

(e) **Successors and Assigns.** Professional Services Consultant shall not assign or transfer any Release Orders issued under this BOA and/or the BOA itself or delegate its duties under same without the prior written approval of Princeton University. Professional Services Consultant for itself and Professional Services Consultant'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 Consultant with respect to all covenants of this BOA.

(f) **Execution.** This BOA shall not be effective unless and until the BOA (Part I) is signed by all parties. This BOA may be executed by the parties individually in counterparts, all of the counterparts when taken together shall constitute one single instrument of agreement. For the purpose of this BOA an electronic PDF copy of a signature shall be deemed an original, and delivery may be by email of the same. See Article III(a) for issuance of Release Orders by Princeton University and the conditions for their binding effect on Professional Services Consultant.

(g) **Limitation of Actions.** The parties agree that any Claim or other dispute and related action by Professional Services Consultant against Princeton University arising out of or relating to this BOA shall be commenced within one (1) year after completion of the Basic Services for the Release Order to which the Claim and/or action relates, any otherwise applicable statutory limitations period notwithstanding, except for actions for indemnity or contribution arising out of actions brought against Professional Services Consultant by third parties. The parties further agree that any period of limitations on any Claim of Princeton University against the Professional Services Consultant shall in no event begin to run until the date of completion of the Basic Services for the last Release Order issued under this BOA or until the date on which Princeton University knew, or reasonable should have known, the basis for the Claim against the Professional Services Consultant, 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 Consultant (and subconsultants, 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 consultants and subconsultants 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 Consultant 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 Consultant 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 Consultant's written request for approval and submission of material shall be made to Princeton University's Project Manager not less than ten (10) days prior to the date needed for any such requested review and approval. Professional Services Consultant's failure to strictly comply with the terms of this Article XVIII(i) shall be a material breach of this BOA.

(j) **Severability.** Should any term or provision of any Release Order or this BOA, or any part thereof, be held illegal, invalid or unenforceable under applicable law by a court of competent jurisdiction, such term or provision, or part thereof, shall be deemed ineffective to the extent of such invalidity or unenforceability only and severed from the Contract Documents and the remaining term(s) and provision(s) shall remain unaffected thereby.

(k) **Modification of Individual Release Orders by "Release Order Amendment".** The parties agree that, once issued, individual Release Orders may be modified and/or Additional Services authorized thereunder only by means of a written instrument approved and produced by Princeton University and which is identified therein as being final and binding and signed by Princeton University's authorized representative and the Professional Services Consultant stating their full agreement with respect to any change in the provisions of the Release Order and/or Additional Services thereunder (the "Release Order Amendment"). It is expressly agreed that the term Release Order Amendment as used in the BOA Documents shall be deemed to include only those written instruments that have been produced,

approved and signed by Princeton University as provided in the preceding sentence. A Release Order Amendment signed by the Professional Services Consultant indicates its agreement therewith, including the adjustment of the Project schedule, and/or the Fixed Price or NTE Price, if any, as the final and full resolution for the Professional Services Consultant and all of its subconsultants of the underlying change in the Release Order and/or Additional Services thereunder and all events, occurrences and circumstances relating thereto. Except as provided in this Article XVIII(k), no order, statement, or conduct of Princeton University shall be treated as a change in the Release Order or approval or authorization of Additional Services under the Release Order or entitle the Professional Services Consultant to an equitable adjustment of the Project schedule, and/or the Fixed Price or the NTE Price, except with respect to a Disputed Additional Service if otherwise compensable subject to all other terms of this BOA and any individual Release Order.

(1) Except for modification for an individual Release Order by a Release Order Amendment as provided in paragraph (k) above, the terms and conditions of this BOA may only be modified by a BOA Amendment as provided in Article I(a), Article II(e), Article III(d) and elsewhere in this BOA.

(l) **Waiver.** Any failure on the part of Princeton University to complain of any act or failure to act on the part of the Professional Services Consultant or to declare the Professional Services Consultant in breach hereunder, irrespective of how long such failure continues, shall not constitute a waiver of any rights of Princeton University or duties or obligations of Professional Services Consultant under the BOA or constitute any approval of or acquiescence in any breach by Professional Services Consultant, except as may be specifically agreed in writing by Princeton University. No consent or waiver, express or implied, by Princeton University with respect to any breach by the Professional Services Consultant of any obligations under the BOA shall be deemed or construed to be a consent or waiver with respect to any other breach by Professional Services Consultant under the BOA.

(m) **Applicable Law.** This BOA is deemed entered into in the State of New Jersey. All Claims or other disputes between the parties, including those regarding the validity, construction of, interpretation of, and the parties' obligations under, this BOA shall be governed by the laws of the State of New Jersey, notwithstanding any of that state's laws to the contrary, including, without limitation, giving no effect to its choice of law rules. For all Claims or other disputes not resolved by mediation pursuant to Article XVII, Princeton University and Professional Services Consultant hereby consent to the exclusive venue and jurisdiction for the resolution of any such Claims or disputes 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 Mercer County, and waive any challenge to the venue or personal jurisdiction of such courts.

(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 Consultant.** Professional Services Consultant hereby warrants that, to the extent applicable, for the duration of the BOA it shall be fully licensed and authorized to practice in New Jersey and to provide any Basic Services required under any Release Order issued under the BOA. Likewise, Professional Services Consultant shall ensure that, to the extent required by applicable law, all subconsultants, as entities, and all persons providing professional services by or on behalf of such subconsultant entities, are appropriately licensed and authorized to practice in and provide their respective services in the State of New Jersey for any Basic Services required under any Release Orders issued under this BOA.

(p) **Records/Right to Audit.** The Professional Services Consultant is required to retain records which shall include, but not be limited to, copies of all Design Documents, documents, plans, Drawings/drawings,

Specifications/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 any of the Projects under any Release Orders issued under this BOA, its design, and the construction of any related projects, 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 Consultant shall retain all records relating to this BOA until the expiration of ten (10) 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 Consultant 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. In the event that Professional Services Consultant receives any request in any manner or medium for any records relating to the BOA or any Release Order issued thereunder, Professional Services Consultant shall provide written notice to Princeton University of same within twenty-four (24) hours of such request. Any such state, federal or other regulatory authority, Princeton University or its authorized representative(s) shall be entitled to inspect, examine, review, copy and audit the Professional Services Consultant’s records at its own expense, within adequate work space at the Professional Services Consultant’s facilities. Failure by the Professional Services Consultant 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 Consultant pursuant to the BOA.

(q) **Entire Agreement.** This BOA represents the entire and integrated agreement between Princeton University and the Professional Services Consultant and supersedes all prior negotiations, representations or agreements regarding its subject matter, either written or oral. The BOA may be changed, modified, or amended only by a written BOA Amendment signed by both parties, or in the instance of and applicable only to individual Release Orders, by the terms of such individual Release Orders and any Release Order Amendment(s) thereto as provided in and subject to all relevant terms of this BOA.

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: _____

BASIC ORDERING AGREEMENT NUMBER FB100####A

BOA SERVICE

PART II

BOA SCOPE OF SERVICES DOCUMENTS