



# PRINCETON UNIVERSITY

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

## CONSTRUCTION MANAGEMENT GMP CONTRACT FOR PROJECT TITLE

CONTRACT NUMBER FC100#####

WITH  
FIRM NAME

**CONTRACT NUMBER FC100#####**  
**CONSTRUCTION MANAGEMENT GMP CONTRACT**  
**FOR**  
**PROJECT TITLE**

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PART I  
AGREEMENT

PROJECT	"EFFECTIVE DATE" OF CONTRACT
<b>Project Title</b>	<b>Month DD, YYYY</b>
THE TRUSTEES OF PRINCETON UNIVERSITY	CONTRACTOR
<b>Princeton University Facilities Procurement Office E. A. MacMillan Building Princeton, NJ 08544</b>	<b>Firm Name Address, City, State, Zip</b>

This Guaranteed Maximum Price ("GMP") Construction Contract (the "Contract") for the **Project Title** (the "Project") is made and entered into as of the Effective Date 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 "Contractor"), organized and existing under the laws of the **State or Commonwealth of [State]** with its principal offices located at the address shown above.

**WITNESSETH**

**WHEREAS**, Princeton University desires that the Contractor furnish Construction services, labor, material and equipment more fully described in the documents comprising this Contract; and

**WHEREAS**, the Contractor represents that it is willing and able to provide these services, labor, material and equipment in accordance with the terms of this Contract;

**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 Contractor do mutually agree as follows (each of Princeton University and Contractor may hereinafter be referred to as a party or collectively as the parties):

**ARTICLE I – THE "CONTRACT" AND THE "CONTRACT DOCUMENTS"**

(a) The "Contract Documents" consist of the documents listed below in this paragraph, including all Modifications thereto, all of which form the "Contract" and are as fully a part of the Contract as if attached to this Agreement or repeated herein. A "Modification" to the Contract is: (1) a written amendment to the Contract signed by both parties; (2) a Change Order (as defined in and pursuant and subject to Part II of the Contract, General Terms & Conditions, Section H and its subparts) signed by both parties; or (3) a Disputed Change Order (as defined in and pursuant and subject to Part II of the Contract, General Terms & Conditions, Clause H5) issued by Princeton University. The Contract Documents are:

(1) **This Agreement (Part I).**

- Attachment 1 – Princeton University’s Request for Proposal titled “[INPUT]”, in its entirety, dated [INPUT], and if not attached hereto deemed incorporated herein by reference as Attachment 1 (the “RFP”). (#INPUT pages)

- Attachment 2 – Contractor’s proposal dated [INPUT], or portions thereof, only to the extent as attached as Attachment 2 (the “Proposal”). (#INPUT pages)
  - [INPUT - other Attachments, if any].
- (2) **General Terms and Conditions for Construction Contracts (v9.0 06-2020) (Part II)** (the “General Terms & Conditions”). Any references in this Agreement to specific ‘Clauses’ of the Contract refer to this document.
- (3) **GMP Breakdown and Basis Documents (Part III):**
- Attachment 1 – GMP Itemization (dated, [INPUT]) (#INPUT pages).
  - Attachment 2 – Recommended VE incorporated into GMP (dated, [INPUT]) (#INPUT pages). [if any]
  - Attachment 3 – General Conditions Cost Itemization (dated, [INPUT]) (#INPUT pages).
  - Attachment 4 – Staffing Plan (dated, [INPUT]) (#INPUT pages). [if any]
  - Attachment 5 – Allowances (dated, [INPUT]) (#INPUT pages). [if any]
  - Attachment 6 – Alternates (dated, [INPUT]) (#INPUT pages). The potential Work of the Alternates identified in Attachment 6 shall only be provided by Contractor if requested by Princeton University in writing signed by Project Manager after execution of the Contract subject to the terms of the Contract Documents. [if any]
  - Attachment 7 – Document List, dated [INPUT], which, without limitation, identifies the Drawings and Specifications (#INPUT pages).
  - Attachment 8 – Assumptions and Clarifications and Exclusions, dated [INPUT] (#INPUT pages). This Attachment includes the following
    - (sub-bullet any internal docs to identify).
  - Attachment 9 – any other documents.
- (4) **Project Schedule, dated [INPUT] with a data date of [INPUT] (Part IV).**

(b) Any documents attached to any of the above identified Contract Documents or identified therein as being part of said document or this Contract at the time of execution and delivery of this Contract shall be deemed incorporated therein and herein as part of the Contract Documents subject to any other applicable terms and conditions of the Contract Documents.

(1) Without limitation to the above Contract Documents, the inclusion of any attachments to this Agreement (Part I) are intended to amplify the Contractor’s obligations under this Contract and shall not be interpreted to limit the Contractor’s obligations in any manner whatsoever. Accordingly, to the extent that some obligations in any attachments are repeated in the Contract Documents and others are not, such omission is not intended to and shall not limit Contractor’s obligations in any manner. Additionally, without limitation to the general applicability of Article I(d) below to all terms and conditions and obligations of the Contract Documents, to the extent of any conflict, inconsistency, ambiguity, or omission between or among the terms of any of the Contract Documents and attachments to this Agreement (Part I), the greater or more stringent terms/conditions/obligations as applied to the Contractor shall control.

(c) The Contract represents the entire and integrated agreement between the parties and supersedes any and all prior negotiations, representations or agreements, either written or oral. Except for Princeton University’s right to unilaterally issue a Disputed Change Order (as defined in and pursuant to Clause H5) the Contract Documents may be changed, modified, or amended only by a written Modification signed by both parties. Specifically, Letter Contract FC100#### (as amended, if so) between Princeton University and the Contractor for Work for this Project is encompassed into and superseded by

this Contract and all Work and all costs for the Work (however defined therein) thereunder are included as part of this Contract and the GMP established herein, and payments made thereunder shall be treated as payments hereunder and credited to Princeton University accordingly. **[Delete preceding sentence if Letter Contract is not applicable.]**

(d) The Contract 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 Contract Documents is also to include all items necessary for the proper execution and completion of the Work by the Contractor. Since the Contract Documents are complementary, what is required by one shall be as binding as if required by all; it being the intention of the Contract Documents to include all things reasonably inferable from the Drawings and Specifications. Items not expressly included in the Contract Documents, but which are reasonably inferable therefrom as being necessary to produce the intended results, shall be deemed included in the Work. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contractor shall notify Princeton University before proceeding to request written clarification from Princeton University or the Architect/Engineer (if such request relates to the Drawings or Specifications) to resolve any such inconsistency, but in all instances of any such inconsistency, conflict, ambiguity, or omission the Contractor shall provide the better quality or greater quantity of Work or comply with the more stringent requirement or stricter obligations unless expressly qualified in Contractor's Assumptions and Clarifications and Exclusions document attached as part of Part III of the Contract.

(e) At the time of execution of the Contract and establishment of the Guaranteed Maximum Price herein, the Drawings and Specifications may not be complete. To the extent that the Drawings and Specifications are anticipated to require further development by the Architect/Engineer, it is expressly agreed that the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Except and only to the extent as specifically identified in Part III of the Contract Documents, Attachment 8 – Assumptions and Clarifications and Exclusions as identified in Article I(a)(3), the Contractor hereby specifically acknowledges and represents that the Contract Documents are sufficient to enable it to perform all of the Work of this Project in conformance with the Project Schedule as necessary to complete the Project consistent with the general information and level of finishes reasonably inferable from the Drawings and Specifications at the time of execution of the Contract. Accordingly, Contractor shall not be entitled to an increase in the GMP or extension of the Contract Time by Change Order or otherwise as a result of such further development of the Contract Documents, except that such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order, if and to the extent appropriate subject to Article I(d) and all other terms of the Contract Documents.

## ARTICLE II – DEFINITIONS

(a) Certain definitions applicable to this Contract are found in General Terms & Conditions (Part II) Clause A1 - Definitions. The following additional definition is also applicable to this Contract. The defined term herein and those in Clause A1 are not intended to be a comprehensive list of defined terms in the Contract, many of which are defined elsewhere in individual provisions of this Agreement (Part I of the Contract), the General Terms & Conditions (Part II of the Contract), and the other Contract Documents.

(b) The term "Architect/Engineer" as it appears in the Contract Documents shall specifically mean **Project Architect or Project Engineer**, having an office at Project Architect City, State and shall aggregately include all subconsultants employed or retained or coordinated by the Architect/Engineer including, but not limited to, structural, mechanical, electrical and other engineers and all other consultants to design the elements and observe the construction of a complete building structure and system. It is understood

that the Architect/Engineer may be terminated during the term of this Contract and such termination shall not be a breach of this Contract. If the employment of the Architect/Engineer is terminated, within a reasonable time thereafter and to the extent reasonably necessary for the progress of the Project, a new Architect/Engineer shall be retained whose status under the Contract Documents shall be that of the former Architect/Engineer. Notwithstanding the inclusiveness of the defined term Architect/Engineer herein, any required approvals from Architect/Engineer or any submittals to or communication with Architect/Engineer as required of Contractor by or pursuant to the Contract Documents shall be through or with the firm set forth in the first sentence of this Article II(b) (by its authorized representative on this Project as made known to Contractor), unless expressly authorized or directed otherwise in writing by said firm or Princeton University.

**ARTICLE III – STATEMENT OF WORK**

(a) **General.** The Contractor shall furnish all labor, equipment, material and supervision to complete the Work indicated in the Contract Documents listed or referred to in Article I hereof for the Project, in accordance with this Contract.

(b) **Building Information Modeling (BIM).** BIM Services [ x ] are [ ] are not included in the scope of this Contract. If BIM Services are required as part of this Contract, Contractor shall be required to utilize BIM technology in coordination with the Project team in compliance with Section 1.5 of the Princeton University Design Standards Manual, Release 12.0 (June 2018) and its appendices, each of which shall be deemed incorporated herein by reference and made a part hereof and form part of the Contract Documents as if enumerated in Article I(a). It is understood that certain of the aforementioned appendices may be forms or templates and shall serve in that capacity. If BIM Services are required as part of this Contract, the Project’s BIM Execution Plan, when complete and approved by Princeton University in its discretion, shall likewise be deemed incorporated herein and made a part hereof and form part of the Contract Documents as if enumerated in Article I(a). The aforementioned Design Standards Manual may be updated bi-annually, although more current individual sections or supplements may be provided on an as-needed basis.

**ARTICLE IV – GUARANTEED MAXIMUM PRICE**

(a) **Guaranteed Maximum Price.** In full consideration for the performance of all items required by the Contract for the proper completion of the Work and all other obligations of Contractor hereunder, Princeton University agrees to pay the Cost of the Work plus the Contractor’s Fee established in accordance with this Contract. The Contractor’s “Fee” is the fixed amount set forth in the summary below. The Contractor guarantees that the Cost of the Work plus the Contractor’s Fee shall not exceed the total amount of **\$XXX,XXX,XXX.XX (Enter dollar value text)** (the “Guaranteed Maximum Price” and/or the “GMP”), subject to additions and deductions only by Change Orders appropriately signed by Princeton University as provided in the Contract Documents. The elements comprising this GMP are more fully detailed in the Guaranteed Maximum Price Breakdown and Basis Documents set forth in Part III and are summarized here as follows:

Subcontractor/Trade Costs	\$xx,xxx,xxx
General Requirements	\$x,xxx,xxx
Subtotal Direct Work	\$xx,xxx,xxx
General Conditions Costs	\$x,xxx,xxx
Subtotal Construction Costs	\$xxx,xxx,xxx
GL/Excess Insurance	\$x,xxx,xxx
Subcontractor Default Insurance (SDI)	\$x,xxx,xxx

Builders Risk Insurance (BRI)	\$xxx,xxx
<b>Total Cost of the Work</b>	<b>\$xxx,xxx,xxx</b>
Construction Contingency	\$x,xxx,xxx
Contractor’s Fixed Fee	\$x,xxx,xxx
<b>TOTAL Guaranteed Maximum Price (GMP)</b>	<b>\$xxx,xxx,xxx.xx</b>

(b) **General Conditions Costs.**

(1) Attached as part of the GMP Breakdown and Basis Documents (Part III of this Contract) is Contractor’s General Conditions Cost Itemization, which identifies each category of the Contractor’s “General Conditions Cost” component of the Cost of the Work as agreed upon between Princeton University and Contractor. Contractor shall not be entitled to reimbursement for any categories of costs that are generally considered in the construction industry to be “general conditions” costs unless they are identified on the General Conditions Cost Itemization included as part of the GMP Breakdown and Basis Documents (Part III of the Contract) notwithstanding any other provision of the Contract Documents to the contrary that may otherwise allow for reimbursement of such or identifies such costs as a Cost of the Work, including, without limitation, Clause L4(a).

(2) The Contractor expressly acknowledges and agrees that a material inducement for Princeton University to enter into this Contract, among other things, is the Contractor’s guarantee that the actual costs incurred for its General Conditions Costs shall not exceed the amount of \$x,xxx,xxx as more fully detailed in the GMP Breakdown and Basis Documents set forth in Part III and summarized in Article IV(a), and that all costs or expenses in excess of this amount shall be borne by the Contractor unless adjusted by an appropriate Change Order signed by Princeton University. See also Terms & Conditions Clause L4(b). Should Contractor seek an increase in the not-to-exceed amount of the General Conditions Cost set forth above, the Contractor, whether seeking usage of the Construction Contingency for such or making a Claim for an increase in the GMP for alleged increased General Conditions Costs in connection with any alleged change in the Work or an alleged excusable delay or otherwise, shall submit a separate Change Order Request exclusively addressing General Conditions Costs and shall include supporting rationale for the Claim (in addition to complying with all requirements in the General Terms & Conditions). Change Order Requests addressing changes to the Work shall not intermingle costs or expenses for General Conditions Costs with other costs claimed with respect to any claimed change in the Work or the Contract. The Contractor is not entitled to a mark-up for Fee assessed on any Claims or Change Orders for General Conditions Costs and such General Conditions Costs shall not be included in any calculations to establish or adjust the Contractor’s Fee in accordance with paragraph (c)(1) below.

(3) **Hourly Billing Rates. Check Applicable:**

The parties have agreed to the fully-burdened Hourly Billing Rates set forth below for the Contractor’s salaried project administration and field supervision staff and other direct-hire labor included as part of the General Conditions Costs for this Project. These billing rates have been established solely for the purpose of comprehensive reimbursement of the Contractor’s labor costs by Princeton University (including, but not limited to, actual salaries, wages, bonuses, benefits, payroll taxes, insurance, and other labor-related overheads and burdens but excluding Fee), which are included as part of Contractor’s General Conditions Costs.



Individual/Labor Category	Hourly Rate

These Hourly Billing Rates are subject to audit and shall be adjusted either up or down as a result of the audit review. Any corresponding General Conditions Costs billed to date shall then be adjusted accordingly and a billing credit or charge applied on a subsequent payment application; however, there shall be no adjustment made to the GMP amount for General Conditions Costs and any increases resulting from adjustments to these Hourly Billing Rates shall be absorbed within the GMP.

Prior to increasing rates for existing staff or adding any new staff to the Project team, the Contractor shall provide hourly billing rates for Princeton’s consideration and approval within its discretion and, if and to the extent approved, incorporation into the Contract.

**OR**

[ ] The parties have agreed to the fully-burdened fixed hourly billing rates for the wages and salaries of Contractor’s project administration and field supervision staff and other laborers directly employed by Contractor included as part of the General Conditions Costs for this Project, which are set forth in Part III of the Contract (GMP Breakdown and Basis Documents). These hourly billing rates include, but are not limited to, actual salaries, wages, bonuses, benefits, payroll taxes, insurance, and other labor-related overheads and burdens and are fully burdened, but exclude Fee. These hourly billing rates shall remain fixed and in effect for the duration of this Contract unless set forth in Part III as subject to escalation and if so, only to the extent set forth therein.

(4) **Methodology for Charging Vacation and Holidays.** The Parties have agreed that vacation and holidays will be charged as follows: **[insert applicable language]**

(c) **Adjustments to the GMP.** The Guaranteed Maximum Price may be increased or decreased resulting from changes to the Work and/or the Contract made only pursuant to approved Change Orders signed by Princeton University as provided for in this Article and in accordance with General Terms & Conditions Section H (Changes in the Work and/or the Contract). The Contractor’s Fee amount established in this Contract is a fixed amount that shall be adjusted only as provided for in this paragraph (c)(1) and paragraph (c)(2) below.

(1) **Upward Adjustment to GMP for Contractor’s Fee.** The Contractor’s Fee established in this Contract is a fixed amount and it shall not fluctuate or be revised upward based on the actual Cost of the Work, and the Contractor is not entitled to any mark-up for fee on individual Change Orders nor shall individual Change Orders cause any increase to the Contractor’s Fee. However and notwithstanding the preceding, upon completion of the Work, if the cumulative net total of all Change Orders calculated pursuant to this paragraph (c)(1) results in an increase to the Guaranteed Maximum Price in excess of **\$X,XXX,XXX.XX**, then the Contractor’s Fee shall be correspondingly increased by an amount equal to **NN%** of the cost of the applicable Change Order Work in excess of **\$X,XXX,XXX.XX**. When calculating the cumulative net total of all Change Orders that increase the GMP for the purpose of this paragraph (c)(1), amounts related to the following shall be excluded from any and all calculations and Fee adjustments:

(i) Any Change Order issued to increase the amount established for General Conditions Costs without regard to the reason for the increase.



- (ii) Transfers within the GMP issued to make adjustments to the amount established for Construction Contingency or buy-out savings or to incorporate changes for which costs are to be paid from the Construction Contingency, including without limitation "zero dollar" Change Orders, as defined in Article IV(d).
- (iii) Change Orders issued to incorporate priced Alternates that have been specifically identified in the GMP or as part of Subcontractor bids.

(2) **Downward Adjustment to GMP for Contractor's Fee.** The Contractor's Fee established in this Contract is a fixed amount and it shall not fluctuate or be revised downward based on the actual Cost of the Work and there shall be no mark-down for Fee on individual Change Orders nor shall individual Change Orders cause any decrease to the Contractor's Fee. However, upon completion of the Work, if the cumulative net total of all Change Orders calculated in conformance with paragraph (c)(1) results in a decrease to the Guaranteed Maximum Price by \$X,XXX,XXX.XX or more, then the Contractor's Fee shall be correspondingly decreased by an amount equal to NN% of such amount.

(3) **Adjustment to GMP for Insurance and SDI Costs.** Calculations of the insurance and Subcontractor Default Insurance (SDI) amounts included in the GMP have been made using the following rates and bases as further detailed in the GMP Breakdown and Basis Documents (Part III of the Contract) and billing and/or adjustments to the GMP (by signed Change Order only) shall be consistent with the same as follows:

- (i) The GL/Excess Insurance rate is x.x% applied to the Cost of the Work for Subcontractors/trade costs (direct work).
- (ii) The Subcontractor Default Insurance rate is x.x% applied to Subcontractor/Trade Costs (refer to Article IX(d) for further information regarding the calculation, adjustment and payment of SDI costs).

(d) **Construction Contingency.** A "Construction Contingency" shall be included within the Guaranteed Maximum Price in the amount of \$X,XXX,XXX.XX (as also identified in Part III - the GMP Breakdown and Basis Documents), which shall be reserved to cover increased or added costs that are Cost of the Work resulting from circumstances that may not be completely predictable or foreseeable at the time that the GMP is established but that can reasonably be assumed to be included within the scope of Work for the Project and presumed to have been included in but were omitted from the GMP. Examples of circumstances that may give rise to the use of Construction Contingency include but are not limited to: (i) utility coordination by the Contractor or a Subcontractor at any tier; (ii) purchasing, estimating, and scheduling difficulties (e.g., changes in local material or labor market conditions at time of bidding; or, items that were missed in the GMP but that are required expressly or by necessary implication by the Contract Documents for a complete Project; or, net Subcontractor buyout overruns that exceed the GMP for the trade line(s) involved as provided in subpart (2) to this Article IV(d) below); (iii) detail refinement (i.e., minor items or material selections required to complete a detail that may have not been fully developed in the design documents or that were familiar to the Contractor from its work on previous Princeton University Projects); and (iv) the re-procurement of a Subcontractor at any tier due to termination for any reason, excluding any re-procurement costs that would be covered by Subcontractor Default Insurance (SDI) and any deductibles to be paid in connection with any applicable SDI insurance, if SDI is included in this Contract, and any legal costs which are unallowable. The above list is meant to be illustrative and Princeton University, in its discretion, may determine that there are other circumstances that meet the general definition for use of Construction Contingency; however, the Construction Contingency is not intended to fund additional scope or to fund additional cost of allowances beyond the

dollar values included in the GMP. Additionally, notwithstanding anything to the contrary herein, Contractor shall not be allowed to receive payment of sums from the Construction Contingency or otherwise for costs/charges/sums/etc. relating to: (i) sums that are successfully recovered from a Subcontractor or other responsible entity (with the express understanding that Contractor shall be required to take reasonable action to recover such sums without resort to litigation); (ii) sums for which Contractor would have been indemnified or compensated by insurance (including SDI), if not for the failure of Contractor to procure and maintain such insurance in accordance with the requirements of this Contract, or if not for the failure of Contractor to comply with the requirements of any insurance carriers providing coverage for the Project, or if not for the failure of Contractor to pursue all available claims against such carriers for coverage or recovery; (iii) deductibles of any kind (insurance, SDI, etc.); and (iv) any sums, costs, charges, etc. that exceed the available Construction Contingency set forth in the Guaranteed Maximum Price (as such amount may be adjusted only by the terms of this Contract). Notwithstanding the establishment of the Construction Contingency or any of the listed examples for its potential usage above or any other circumstances, the Contractor's use of any Construction Contingency funds and each individual transfer into or out of Construction Contingency shall be subject to advance review and written approval by Princeton University, which shall not be unreasonably withheld. If the Construction Contingency is exhausted, all costs and expenses that would qualify for reimbursement from the Construction Contingency shall be borne by Contractor. Any amount remaining in the Construction Contingency at final payment shall be counted as Savings for purposes of Article IV(e).

(1) **Contingency Transfers.** The Contractor is responsible for initiating requests for, obtaining prior written approvals, managing, and reporting on transfers into and out of Construction Contingency. Prior to initiating any Construction Contingency transfer, the Contractor shall submit a written request for approval to Princeton University. The request shall describe the need for the transfer and identify how the transfer will be accounted for within the GMP. Princeton University will consider the request to determine if the transfer should be made from Construction Contingency or by another means and will not unreasonably withhold or delay its approval or determination. Contractor shall maintain a log of all Construction Contingency transfer requests and shall summarize and include this log with its Monthly Status Reports. Should Contractor dispute Princeton University's determination with respect to transfer of usage of the Construction Contingency, it shall proceed with such dispute as a Claim as set forth in the Contract Documents.

(2) **Subcontractor Buyout.** Upon completion of 80% by count of the Subcontractor buyouts, Contractor shall prepare and submit a "Subcontractor Buyout Report" for Princeton University's review and approval that lists and summarizes all Subcontractor buyouts to date. For each Subcontract awarded, the report shall include a list of all trade line items included in the award and compare the total GMP amount for those line items to the actual award value for the Subcontract to calculate the "buyout variance" for each Subcontract and then tally these to determine if there is an overall net buyout "savings" or "overrun" at that point. If there are net buyout "savings" then that net amount shall be transferred into and treated as a part of the Construction Contingency. Should there be a net buyout "overrun" a transfer out of Construction Contingency may be made after consideration of other mitigating actions that may be available within the GMP. It is expressly understood that unused Allowances shall not for any purpose be transferred into the Construction Contingency and shall remain as a credit to Princeton University one hundred percent (100%) of such.

(3) **Use of Unspent Construction Contingency Savings.** As the Project nears Substantial Completion, it may become apparent from the Contractor's reports and projections that there

may be unspent Construction Contingency remaining in the GMP that would otherwise be returned to Princeton University as Savings pursuant to paragraph (g) below. Princeton University may utilize these identified potential Savings to fund additional scope or other adjustments to the GMP (which would otherwise be the subject of Change Orders) in amounts as agreed to by the parties. These potential Savings transfer transactions shall be implemented via the issuance of “zero dollar” Change Orders to the Contract, which shall have no effect on the GMP but shall reduce the Construction Contingency in the underlying amount thereof and which shall be transferred out of Construction Contingency and paid to Contractor as part of said “zero dollar” Change Order.

(e) **Savings.** Upon completion of the Work, the Contractor shall provide to Princeton University a detailed and complete accounting of the Cost of the Work for the Project. Should the actual final Cost of the Work plus the Contractor’s Fee be less than the GMP amount as adjusted pursuant to this Contract (“Savings”), the Savings shall accrue one hundred percent (100%) to Princeton University and zero percent (0%) to the Contractor. Should, however, the actual final Cost of the Work plus the Contractor’s Fee applicable thereto exceed the GMP amount as adjusted pursuant to this Contract, then, the excess amount shall be borne solely by the Contractor.

(f) **Payment Schedule.** Prior to the submission of the first Application for Payment, Contractor shall prepare and submit for Princeton University’s review and written approval a proposed schedule of values (trade breakdowns) and fee payment schedule. This shall be the basis for the Contractor’s monthly Applications for Payment.

(g) **Limitation on Subcontractor Markup.** Contractor shall include in each Subcontract a limitation on the markup that Subcontractors can include in their change orders. The cumulative total markup (Subcontractor markup plus all lower-tier Subcontractor markups) shall not exceed fifteen percent (15%) of the direct cost of the change in the Work.

**ARTICLE V – TIME OF PERFORMANCE**

(a) The Work to be performed under this Contract shall commence on Month ##, 20##. Subject to authorized adjustments only as agreed to by Princeton University in a signed Change Order, Contractor shall, without limitation, achieve the following Schedule Milestone dates (which are not intended to be a comprehensive list of all Schedule Milestone dates):

*[The following list contains examples of the milestones that may be tracked for a construction project. The list to be incorporated into the final contract will be tailored to address the specific requirements for the Project by Princeton and may include these or other milestones not listed here.]*

Milestone	Schedule Date
Site Mobilization	
Start Demolition	
Start Excavation	
Start Foundations	
Substructure Complete	
Building Enclosure Complete (water-tight condition)	
MEP Systems Complete	
Conveying Systems Complete	
Interior Construction Complete	
Security Testing Complete	
Punch List	

Milestone	Schedule Date
O&M Document Delivery and Training Complete	
Certificate of Occupancy, Substantial Completion	
Substantial Completion	
Punch List Complete	
Contract Closeout	

(b) Contractor acknowledges that time is of the essence in the performance of the Work under this Contract. Any adjustments to the dates specified above may be made only as authorized in writing by Princeton University in a signed Change Order.

**ARTICLE VI – KEY PERSONNEL**

The personnel specified below are considered to be key personnel in accordance with Clause B3 (Key Personnel) of the General Terms & Conditions:

<b>Name, Title</b>	<b>Name, Title</b>
<b>Name, Title</b>	<b>Name, Title</b>

**ARTICLE VII – PAYMENTS**

(a) In accordance with General Terms & Conditions Section I (Payments), the Contractor shall prepare and submit monthly invoices or Applications for Payment for Work performed under this Contract.

(b) Invoices shall contain sufficient detail and supporting documentation as required by Section I of the General Terms & Conditions. Invoices shall be typed or computer-generated and include the following minimum information: FPO Contract Number FC100#####; Contractor’s company/business name; a sequential invoice number or other unique invoice identifier; the invoice amount; and the invoice date. Invoice documents together with any required supporting documentation shall be scanned or converted into a single PDF file. Contractor shall electronically submit the invoice to Princeton University by uploading the PDF file through the FPO Contract Payment Request Portal website located at: <https://facnet.princeton.edu/invoice/>.

(c) The Contractor shall not invoice for nor will Princeton University pay amounts in excess of the established Guaranteed Maximum Price as set forth in Article IV. All amounts invoiced and paid under this Contract shall be in U.S. Dollars (\$) and are not subject to currency fluctuation.

(d) Payment will be made to the Contractor within 30 days after receipt by Princeton University of an invoice that is submitted in proper form and substance as approved by Princeton University in conformance with the General Terms & Conditions Clause I1.

**ARTICLE VIII – PROJECT REPRESENTATIVES**

(a) The Contractor’s designated representatives for this Contract and the Project are:

<b>Contractor's Project Manager</b>	<b>Project Manager</b>
<b>Contractor's Administrative Rep</b>	<b>Administrative Representative</b>

(b) Princeton University’s designated representatives for this Contract and Project (individually and collectively herein “Princeton University Representatives”) are:

<b>Princeton Project Manager Name</b>	<b>Project Manager</b>
<b>Princeton Contract Administrator Name</b>	<b>Administrative Representative</b>

(c) Agreements and/or actions taken by the Contractor that, by their nature, effect a change in the Work to this Contract or would be a Modification to the Contract, shall only be binding upon Princeton

University when such change or action is specifically authorized in writing in advance by one of the Princeton University Representatives listed above and otherwise in conformance with all terms of the Contract Documents. Therefore, any Work or change undertaken by the Contractor at the direction of anyone other than a Princeton University Representative, or without the prior written authorization of a Princeton University Representative, is at the Contractor’s own risk.

**ARTICLE IX – INSURANCE**

(a) Prior to beginning any of the Work on the Project or at the time of execution of this Contract, whichever occurs first, the Contractor shall establish, maintain and keep in force policies for minimum insurance coverage as indicated in Clause G1 of the General Terms & Conditions set forth in Part II including the minimum coverage for General Liability as indicated below:

**General Liability:**

Each Occurrence..... Select applicable coverage limit...  
General Aggregate..... Select applicable coverage limit...

**Excess Liability:**

General Aggregate..... Select applicable coverage...

**Pollution Liability:**

General Aggregate..... Select applicable coverage...

(b) Prior to or within ten (10) consecutive calendar days after execution of this Contract and, under any circumstances, prior to the Contractor entering Princeton University’s premises to begin Work under this Contract:

- (1) The Contractor shall submit an insurance certificate(s) evidencing compliance with all requirements for insurance coverage to Princeton University for review and approval; and,
- (2) In accordance with Clause G1(a)(7), the Contractor shall require and verify compliance with the insurance requirements by any Subcontractor that may be engaged by the Contractor for Work under this Contract.

(c) Builders Risk Coverage. Builders Risk Coverage for the Project shall be provided by:

- Princeton University pursuant to Clause G1(b)(1)
- Contractor pursuant to Clause G1(b)(2)

(d) Subcontractor Default Insurance (SDI)  is  is not applicable to this Contract.

(1) The Contractor shall provide Subcontractor Default Insurance (“SDI”), for which the Contractor shall be reimbursed at an amount calculated using an absolute rate of \$X.XX per \$1,000 of enrolled subcontracted volume. The estimated total enrolled subcontracted volume is the amount for total direct Work as shown in the Part III GMP Breakdown and Basis Documents. Unless otherwise agreed to by Princeton University in writing, and notwithstanding the value of the total direct Work as shown in the Part III GMP Breakdown and Basis Documents, total enrolled Subcontract volume shall not include low-risk purchased services typically included in general conditions and/or general requirements (such as, but not limited to, scheduling, surveying, transportation, traffic control, snow removal, dumpster, portable toilets, cleaning, etc.), nor shall it include Construction Contingency or Subcontractors covered by a performance or payment bond nor Subcontractors not enrolled in the SDI program.

- (2) This amount calculated as described above for SDI reimbursement will be based upon the total enrolled subcontracted volume included in the GMP; therefore, whenever the total enrolled subcontracted volume amount is revised (i.e., upon the 80% Subcontractor buyout milestone, upon issuance of Change Orders, etc.), the SDI amount shall also be revised using an absolute rate of **\$X.XX** per \$1,000 of the net increase or decrease in the enrolled subcontracted volume amount.
- (3) The Contractor shall be responsible for all Subcontractor Default Insurance policy deductibles, co-payments, losses, direct costs, indirect costs, and non-reimbursable costs. All risks and requirements of the Subcontractor Default Insurance are borne solely by the Contractor.
- (e) As required by Clause G1, Contractor is responsible for ensuring that Princeton University is notified in advance of any material change to or renewal of any of the insurance coverages during the term of the Contract and, in the event of such changes, Contractor shall provide a new insurance certificate to evidence continued compliance with Princeton University's insurance requirements.

#### ARTICLE X – SUPPLIER DIVERSITY SUBCONTRACTING PLAN

- (a) This Article [ X ] is [ ] is not applicable to this Contract.
- (b) Princeton University has established an overall goal of 15% diverse spend across all categories of design and construction services. In support of this goal, the Contractor shall maximize opportunities for participation by diverse suppliers to ensure that minority-owned business enterprises (MBE's), woman-owned business enterprises (WBE's), veteran-owned business enterprises (VBE's) and LGBT-owned business enterprises (LGBTBE's) have an equitable opportunity to compete for Subcontracts.
- (c) A supplier diversity subcontracting plan (SDSP) is included in and made a part of this Contract.
- (d) Unless otherwise indicated, the SDSP includes:
- (1) A statement of the total dollars planned to be subcontracted and a statement of the total dollars planned to be subcontracted to MBE's, WBE's, VBE's and LGBTBE's;
  - (2) A description of the principal types of supplies or services to be subcontracted and an identification of types planned for subcontracting to MBE's, WBE's, VBE's and LGBTBE's;
  - (3) A description of the method used to develop the subcontracting planned dollar amounts;
  - (4) A description of the method used to identify potential sources for solicitation purposes;
  - (5) The name of the individual who will administer the subcontracting program, and a description of the duties of the individual;
  - (6) A description of efforts to be taken to ensure that MBE's, WBE's, VBE's and LGBTBE's have an equitable opportunity to compete for Subcontracts;
  - (7) Assurances that the offeror will include language substantially the same as this language in all Subcontracts in excess of \$500,000 that offer further subcontracting opportunities;
  - (8) Assurances that the information set forth in paragraph (e) below will be submitted in the required intervals so that Princeton University can determine the extent of compliance with the SDSP; and,
  - (9) A description of the types of records that will be maintained concerning procedures adopted to comply with the requirements and planned dollar and percentage amounts in the SDSP, including establishing source lists; and a description of the efforts to locate MBE's, WBE's, VBE's and LGBTBE's and to award Subcontracts to them.



(e) Reporting Requirements. Prior to final payment, a report including the information listed below shall be submitted to Princeton University's Administrative Representative. An interim report shall be submitted either semi-annually to cover the Contract period through June 15 and/or December 15 each year, or, at Princeton University's discretion, quarterly to cover the Contract period through March 15, June 15, September 15 and/or December 15 each year in addition to the final report required prior to final payment. Interim reports are due within ten (10) days after the close of each reporting period.

(1) A summary of the bidding process to include total number of bidders solicited, total number of bidders in each supplier diversity category, total number of categories of supplies/services covered, and total number of diverse suppliers selected;

(2) Total Subcontract dollars planned, total Subcontract dollars actually spent, and percentage of total Subcontract dollars actually spent (vs. planned) for the reporting period, or the final figures if a final report;

(3) For each supplier diversity category included in the SDSP, total Subcontract dollars planned, total Subcontract dollars actually spent, and percentage of total Subcontract dollars actually spent (vs. planned) for the reporting period, or the final figures if a final report;

(4) A summary of the primary reasons or rationale for any significant deviations from the planned dollar amounts set forth in the SDSP.

(f) Failure to fulfill the obligations under paragraph (e) above shall be just cause for Princeton University to withhold payment, including final payment, until compliance is demonstrated to the satisfaction of Princeton University.

#### ARTICLE XI – NEW JERSEY PREVAILING WAGE ACT

(a) This Article [ X ] is [ ] is not applicable to this Contract.

(b) Pursuant to the provisions of N.J.S.A. 18A:72A-5.1 et seq., which govern contracts financed in whole or in part by the New Jersey Educational Facilities Authority, the Contractor hereby acknowledges that the Contract is subject to the provisions, duties, obligations, remedies and penalties of the New Jersey Prevailing Wage Act, Chapter 150 of the New Jersey Laws of 1963, New Jersey Department of Labor and Industry, as amended (N.J.S.A. 34: 11-56.25, et seq.).

(c) Wage and fringe benefit rates shall be paid to all workmen as required under N.J.S.A. 34: 11-56.25, et seq. The Contractor shall obtain the applicable Wage Rate Determination, as promulgated by the State of New Jersey Department of Labor and Workforce Development, by using its website at <https://www.nj.gov/labor>. The Wage Rate Determination in effect as of the effective date of this Contract shall govern this Contract. The Contractor shall maintain in its file a copy of the applicable Wage Rate Determination, which shall be made available to Princeton University upon request.

(d) The Contractor shall prepare and retain (and shall cause its Subcontractors at all tiers to prepare and submit to the Contractor for retention) Weekly Certified Payrolls in accordance with N.J.S.A. 34: 11-56.25, et seq., commencing with the first of the Contractor's Work on the Project and continuing uninterrupted until the completion of its Work. With each invoice or payment application, the Contractor shall provide a written certification that it has complied with the prevailing wage requirements. Failure of the Contractor to prepare and submit its certification in a timely manner, proper in form and substance, may result in the withholding of progress payment(s) or final payment until such time as the Contractor corrects any such deficiencies with respect to the submission of its certification. In addition, if it is determined that any worker has been paid less than the prevailing wage required, Princeton University may terminate the Contract or the Subcontract in accordance with N.J.S.A. 34: 11-56.27.



(e) The Contractor and each Subcontractor shall maintain records and make them available for inspection in accordance with N.J.S.A. 34: 11-56.29. The Contractor and each Subcontractor shall post the prevailing wage rates in accordance with N.J.S.A. 34: 11-56.32. The Contractor and each Subcontractor shall be registered in accordance with N.J.S.A. 34:11-56.52.

(f) As a condition to final payment under the Contract, the Contractor shall file the written statements required by N.J.S.A. 34: 11-56.33, proper in form and substance and provide copies or appropriate documentation of such to Princeton University.

(g) To the fullest extent permitted by law, the Contractor and each Subcontractor shall defend, indemnify and hold Princeton University and its officers, directors, employees, agents and assigns harmless from and against any and all loss, damage, liability, expense, claims, demands, and causes of action of any kind (including reasonable attorney's fees and administrative costs, incurred by Princeton University), arising or allegedly arising, in any way from or in connection with the Contractor's or any Subcontractor's failure to comply with the New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.25, et seq.

#### ARTICLE XII – CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT

(a) This Article [ X ] is [ ] is not applicable to this Contract.

(b) Contractor's Code of Business Ethics and Conduct:

(1) Within 10 days after Contract execution, unless the Administrative Representative establishes a longer time period, the Contractor shall:

- (i) Have a written code of business ethics and conduct; and
- (ii) Provide a copy of the code to each employee engaged in performance of the Contract.

(2) Within 30 days after Contract execution, unless the Administrative Representative establishes a longer time period, the Contractor shall establish an ongoing business ethics and conduct awareness program and an internal control system that shall:

- (i) Facilitate timely discovery of improper conduct in connection with Princeton University contracts; and
- (ii) Ensure corrective measures are promptly instituted and carried out. For example, the Contractor's internal control system should provide for:
  - periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct;
  - an internal reporting mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports;
  - internal and/or external audits, as appropriate; and,
  - disciplinary action for improper conduct.

(c) Princeton University Compliance Hotline. During the performance of this Contract, the Contractor shall prominently display the Princeton University Compliance Hotline contact information at Contract work sites and off-site offices that support the work site. If the Contractor maintains a company website as a method of providing information to employees, the Contractor shall include a link to the website for

the Princeton University Hotline ([www.princeton.edu/compliance/hotline.html](http://www.princeton.edu/compliance/hotline.html)). The website provides information and instructions for the use of the Hotline. Reports can be submitted online or via phone at 1-866-478-9804.

(d) Subcontracts. The Contractor shall include the substance of this Article XII, including this paragraph (d), in all Subcontracts.

**ARTICLE XIII – BACKGROUND CHECKS**

(a) This Article [ ] is [ X ] is not applicable to this Contract.

(b) Contractor shall ensure that background checks are conducted on all persons performing Work at the Project location, and shall exclude from the Project location any individual who does not successfully pass the background check. Background checks shall be performed prior to the start of Work, consist of seven (7) years of history and include, as a minimum, social security number trace, county criminal felony and misdemeanor criminal record search, national criminal record search, and national sex offender registry. For longer term projects, background checks shall be conducted no less than annually. The Contractor shall maintain in its file a copy of the applicable background checks, which shall be made available to Princeton University upon request.

**ARTICLE XIV – SPECIAL PRICING APPLICABLE TO ALL PRINCETON UNIVERSITY PROJECTS**

(a) Princeton University has executed the following Basic Ordering Agreements (BOA) that contain special pricing (i.e. hourly rates, unit prices, discounts, mark-ups, etc.) applicable to all directly contracted or subcontracted work on Princeton University projects:

BOA Number	Supplier	Services
FB00630K	SimplexGrinnell	Fire Alarm Equipment & Services
FB0705000N	Siemens Industry, Inc.	Automatic Temperature Control Equipment & Services
FB0706000N	Automatic Logic Corporation	Automatic Temperature Control Equipment & Services
FB1007520N	Hogan Security Group (Salto Systems, Inc.)	Keyless Lock System & Door Hardware Equipment & Services
FB1007509N	Access Systems Integration	Card Access Control System & Door Hardware Equipment & Services
FB1009751N	NextGen Security, LLC	Card Access Control System & Door Hardware Equipment & Services
FB1007511N	Convergent Technologies	Card Access Control System and Door Hardware Equipment and Services
FB1003050N	Kistler O'Brien Fire Protection	Fire Alarm Equipment & Services (Gamewell / FCI)

(b) The Contractor may subcontract with some or all of the above listed suppliers to provide these services as a part of its Work on the Project. Princeton University has signed non-disclosure agreements with the above listed suppliers that prohibit the disclosure of the BOA pricing outside of Princeton University. Accordingly, Princeton hereby releases the Contractor from its obligation under Clause D2(e), to set forth the hourly rates, unit prices, or any other pricing element subject to the BOA pricing in its Subcontracts with the above listed suppliers. The Contractor shall include a statement in any Subcontract with the above listed suppliers referencing the BOA number and listing any of the rates or pricing excluded from the Subcontract on the basis of the BOA; however, any lower tier Subcontractor rates or other pricing not covered by the BOA shall be disclosed and specifically listed in accordance with Clause D2(e).

(c) Princeton University fully retains its right to audit the Subcontract in accordance with Clause K6 and, under the terms and conditions of the BOA, retains the right to separately audit any BOA pricing excluded from the Subcontract.

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

**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: \_\_\_\_\_

**Princeton University-Contract Funding Summary**

Department	Fund	Account	Program	Site	Project	Amount
#####	A####	####		#####	#####	\$##,###,###.##
#####	A####	####		#####	#####	\$##,###,###.##
<b>CONTRACT TOTAL</b>						<b>\$##,###,###.##</b>

**CONTRACT NUMBER FC100#####**  
**CONSTRUCTION MANAGEMENT GMP CONTRACT**  
**FOR**  
**PROJECT TITLE**

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**PART II**

**GENERAL TERMS & CONDITIONS**

The attached General Terms & Conditions for Construction Contracts are hereby incorporated into and made a part of this Contract.

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## CONSOLIDATED TERMS & CONDITIONS FOR CONSTRUCTION CONTRACTS

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**SECTION A -- DEFINITIONS**

**CLAUSE A1 DEFINITIONS**

- (a) "Allowance" means, unless the Contract Documents provide otherwise provide, a dollar amount allocated to cover the cost of items of Work that are of indefinite scope or quantity, or where the quality, configuration or other characteristics have not yet been determined. Allowances shall cover the cost to the Contractor of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts, together with all costs for unloading and handling at the Site, labor, installation costs, overhead, profit and other expenses. Whenever costs are more than or less than Allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual costs, or, at Princeton University's option, an applicable unit price, and the Allowances. Contractor shall submit materials and equipment under an allowance for selection by Princeton University in sufficient time to avoid delay in the Work.
- (b) The "Contract" means the written contract between the Contractor and Princeton University, comprised of the written contract itself and all documents defined as Contract Documents therein.
- (c) "Contract Documents" means the documents that comprise the Contract, as more fully set forth in the Contract.
- (d) "Contract Price", in addition to any definition in the Agreement or in the absence thereof, shall also mean:
- (1) Under a Time-and-Materials (T&M) Contract, the Not-to-Exceed Price.
  - (2) Under a Guaranteed Maximum Price (GMP) Contract, the Guaranteed Maximum Price.
  - (3) Under a Cost Plus Fixed Fee (CPFF) Contract, the Target Price.
- (e) "Contract Time" means the period of time established in the Contract within which the Schedule Milestones must be achieved and all of the Contract Work must achieve Substantial Completion. The Contract Time can be adjusted only by Change Order.
- (f) "Contractor" means a person or entity who or which performs or supplies work, labor, services, materials or equipment in connection with the Work at Princeton University. If the General Terms and Conditions are attached to a Contract or referred to in a Contract, "Contractor" specifically includes the party to that Contract who or which, pursuant to that Contract, performs or supplies work, labor, service, materials or equipment in connection with the Work at Princeton University.
- (g) The "Drawings" are 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.
- (h) "Guaranteed Maximum Price" and/or "GMP" means the maximum amount payable to the Contractor for the performance of the Work under a GMP Contract as more fully defined in the Agreement. This term is not relevant for contracts that are not GMP Contracts.
- (i) "Modification" is (1) a written amendment to the Contract signed by both parties; (2) a Change Order (as defined in and pursuant to Section H herein and its subparts) signed by both parties; or (3) a Disputed Change Order (as defined in and pursuant to Clause H5 herein) issued by Princeton University.
- (j) "Not-to-Exceed Price" means the maximum amount payable to the Contractor for the performance of the Work under a Time-and-Materials (T&M) Contract. This term is not relevant for contracts that are not Time-and-Materials (T&M) Contracts.
- (k) "Owner," "Princeton University," "Princeton," and the "University" are used interchangeably throughout the Contract Documents and mean The Trustees of Princeton University.
- (l) "Required Substantial Completion Date" means the required date for Substantial Completion of the Project. The Required Substantial Completion Date can be adjusted only by written Change Order.
- (m) "Site" means the geographical location of the Project as more fully described in the Contract Documents.
- (n) The "Specifications" are 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.
- (o) "Subcontractor" means a person or entity who has a direct contract with the Contractor to perform and/or supply a portion of the Work (including supply of materials). The term Subcontractor shall also mean any subcontractor to a Subcontractor. (e.g., the term refers to a subcontractor of any tier). The term Subcontractor does not include a separate contractor of Owner or subcontractors of a separate contractor of Owner. Each Subcontractor agreement and/or purchase order between Contractor and Subcontractor may be referred to as a "Subcontract."

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## CONSOLIDATED TERMS & CONDITIONS FOR CONSTRUCTION CONTRACTS

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- (p) "Substantial Completion" is defined in Clause E10.
- (q) "Target Price" means the estimated amount payable to the Contractor for the performance of the Work under a Cost Plus Fixed Fee (CPFF) Contract. This term is not relevant for contracts that are not Cost Plus Fixed Fee (CPFF) Contracts.
- (r) The "Work" is without limitation the performance and supply of all work, labor, services, materials, supplies, equipment, supervision, and all things necessary to do what is required pursuant to the Contract, and/or any Letter Contract, and/or any preconstruction contract between Princeton University and Contractor with regard to the Project, whether completed or partially completed.
- (1) "Materials" means collectively the supplies, apparatus, appliances, equipment, fixtures, tools, implements, and other materials required for and in connection with the Work.
- (2) "Services" means collectively the labor, supervision, transportation, utilities, storage, and all other services required for and in connection with the Work.
- (s) The term "or" means and/or.
- (t) Unless the context clearly intends to the contrary, words singular or plural in number shall be deemed to include the other and pronouns having a masculine or feminine gender shall be deemed to include the other. The term "person" shall be deemed to include an individual, corporation, partnership, trust, unincorporated association, government and governmental agency or subdivision, as the context shall require.
- (u) Unless the context clearly intends to the contrary, terms used in this Contract that are not specifically defined herein shall have the same meaning as their common usage in the construction industry.
- (v) This is not intended to be a comprehensive list of defined terms in the Contract, many of which are defined elsewhere in the Agreement (Part I of the Contract), these General Terms and Conditions (Part II of the Contract), and elsewhere in the Contract Documents and not listed or defined here.

### SECTION B -- CONTRACTOR'S ADMINISTRATION AND SUPERVISION OF THE WORK

#### CLAUSE B1 CONTRACTOR'S PERFORMANCE GENERALLY

- (a) In performing its obligations under this Contract, Contractor shall be deemed an independent contractor and not an agent or employee of Princeton University. Contractor is solely and exclusively responsible for the manner and means of doing the Work. The University shall rely upon the organization, management, skill, cooperation, and efficiency of the Contractor to supervise, direct, control, coordinate, and manage the Work, the Site, and the work of the Subcontractors, suppliers, and other contractors (if any).
- (b) Contractor shall perform its obligations under this Contract in a diligent and expeditious manner and such performance shall include all actions necessary and required to complete the Work properly within the duration established. Performance by the Contractor shall be required to the extent set forth in the Contract Documents or reasonably inferable from the Contract Documents as being necessary to produce the intended results.
- (c) Contractor shall furnish all labor, materials, equipment, tools, supervision and other goods and services unless expressly stated otherwise in the Contract. The Contractor shall not use tools or equipment belonging to Princeton University without prior approval. All such tools and equipment shall be returned to Princeton University in satisfactory condition prior to final payment.
- (d) All Work when completed by the Contractor shall be delivered to Princeton University in a complete, undamaged state for use and/or occupancy by Princeton University.

#### CLAUSE B2 SUPERINTENDENCE BY THE CONTRACTOR

- (a) At all times during performance of this Contract and until the Work is completed and accepted, the Contractor shall directly superintend the Work or assign and have on the Site a competent superintendent who is satisfactory to Princeton University and has authority to act for the Contractor.
- (b) The Contractor shall ensure that only those persons having authorized business in connection with the Contractor are allowed on the Site. The Contractor shall require unauthorized personnel to leave the Site immediately and shall notify Princeton University's Project Manager and, if necessary, Public Safety. All visitors to the Site, other than Princeton University personnel, shall be escorted by a representative of the Contractor and shall not be left unattended at any time while on the Site. The Contractor shall restrict access to the Site during non-working hours or anytime the Site is unoccupied for any reason. The Contractor shall ensure that those areas are "off-limits" to both construction and non-construction personnel are clearly and appropriately posted.

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### CLAUSE B3 KEY PERSONNEL

(a) The Key Personnel specified in this Contract, if any, are considered to be essential to the Work being performed hereunder. The Key Personnel identified by name in this Contract shall not be changed except with Princeton University's prior written agreement, which shall not be unreasonably withheld or delayed, or because of resignation or termination for cause. This Contract may be amended from time to time during the course of the Contract to either add or delete personnel, as appropriate.

(b) If at any time Princeton University determines in its sole discretion that any member of the Key Personnel team is not satisfactory to Princeton University, Contractor shall, after receipt of notice and opportunity to achieve the required level of performance and cooperation, if requested by Princeton University, promptly replace such person with another employee who is competent by education, training, and experience to effectively provide the required supervision and who is satisfactory to Princeton University. To assist Princeton University in making an evaluation as to particular substitute personnel, Contractor 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. Contractor shall not remove or replace any Key Personnel without the written consent of Princeton University, unless he or she is discharged by Contractor after consultation with Princeton University, where reasonably possible, or resigns from the employ of Contractor.

### CLAUSE B4 OTHER CONTRACTS

(a) Princeton University may undertake or award other contracts for additional work at or near the Site of the Work under this Contract. The Contractor shall fully cooperate with the other contractors and with Princeton University employees and shall carefully adapt scheduling and performing the Work under this Contract to accommodate the additional work, heeding any direction that may be provided by Princeton University. The Contractor acknowledges that it is the Contractor's specific obligation under the Contract to complete the Work in a timely fashion and in accordance with the Project Schedule so as to permit other contractors to perform their work in a timely fashion. The Contractor shall not unreasonably impede, hinder, or delay Princeton University or any other contractor in the performance of their work.

(b) Contractor shall at all times conduct itself in the best interest of Princeton University and shall coordinate and fit its Work with the work of Princeton University's own forces and separate contractors. Princeton University's own forces and separate contractors shall operate in a like fashion and shall be responsible for their own clean up and trash removal. Contractor shall coordinate its storage, staging, and Work areas (and those of its Subcontractors) with such similar areas of Princeton University's own forces and separate contractors. Contractor shall give Princeton University's own forces and separate contractors every reasonable opportunity to perform their work, store their materials and equipment, and fit their work to its Work but without disrupting or delaying Contractor's progress. Contractor shall furnish promptly to Princeton University's own forces and separate contractors all information regarding Contractor's Work that Princeton University's own forces and separate contractors request in order to coordinate their work with Contractor's Work and to connect and fit their work to Contractor's Work. Contractor shall make its Work ready, in accordance with the Project Schedule, to receive the work of Princeton University's own forces and separate contractors and shall fit its Work to that of the other workmen and separate contractors at the times required for the orderly prosecution of the Work, or as may be directed by the Architect/Engineer. Contractor shall be responsible for the proper fitting of its Work and for coordination of its operations for all trades, Subcontractors, or suppliers engaged upon its Work.

(c) If any part of Contractor's Work depends, for proper execution or results, upon the work of Princeton University's own forces or separate contractor, then Contractor shall, prior to proceeding with any Work or work sequence that immediately follows or is required to fit or connect with the work of Princeton University's own forces or separate contractors, promptly report to Princeton University and the Architect/Engineer any apparent discrepancies, defects, lack of progress or defective workmanship in such other work that (i) render it unsuitable for Contractor to properly execute or connect succeeding work, or (ii) will interfere with Contractor's own operations. Failure to so notify Princeton University shall constitute the Contractor's acceptance of such work as suitable. Contractor shall keep informed of the progress and workmanship of Princeton University's own forces or separate contractors and report in a timely manner any apparent discrepancy, defects, or lack of progress in the work performed by Princeton University's own forces or separate contractors as timely, fit, and proper.

(d) It is the Contractor's duty under the Contract to communicate, after notice to Princeton University, with any contractor who will be performing work that may connect, complement, or interfere with Contractor's Work and to resolve any disputes or coordination problems with such contractor.

(e) The Contractor agrees that it will be directly responsible to any other contractor performing work related to the Project for any loss, injury, damage or delay caused by the Contractor. In accordance with the provisions of Clause G2 hereof, the Contractor shall indemnify and hold harmless Princeton University and the Architect/Engineer from and against any claim brought against any of them by another contractor as a result of the Contractor's alleged acts or omissions.

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(f) Princeton University agrees to include the provisions of this Clause B4 in all separate contracts entered into by Princeton University so that each separate contractor is bound to Princeton University and Contractor to the same extent that Contractor is bound to Princeton University and its separate contractors hereunder. If a written Claim (as defined in Clause J3) and/or other claim has been asserted by the Contractor against any of Princeton University's separate contractors, or by any of Princeton University's separate contractors against the Contractor, Princeton University shall be entitled to withhold amounts as determined by Princeton University to be reasonable from the separate contractor or from the Contractor, pending the final resolution of the corresponding Claims (as defined in Clause J3) and/or other claims.

(g) In the event that any of Princeton University's other contractors performing work should hinder, delay, or damage the Contractor's Work, Princeton University's liability to the Contractor shall be limited to any amount that Princeton University actually recovers from such other contractors as hereinafter set forth. The Contractor shall not make any Claim for adjustment of the Contract Price or the Contract Time against Princeton University based on the foregoing; provided, however, that after the Contractor has used its best efforts to resolve a claim or dispute with another of Princeton University's contractors, the Contractor may request that Princeton University present any claim by the Contractor against any of Princeton University's other separate contractors (the cost and expense of obtaining any such recovery shall be paid by the Contractor) and, in addition, the Contractor may, if it is determined that the Contractor was in fact injured, hindered, or delayed by any other of Princeton University's contractors, request an extension of Contract Time pursuant to Clause E5 hereof. Contractor agrees that any recovery obtained by Princeton University and any extension of Contract Time granted pursuant to Clause E5 shall be Contractor's sole remedy against Princeton University based on the foregoing.

### **CLAUSE B5 PROJECT SITE SIGNAGE**

Contractor's Project Site signage shall be limited to one (1) identifying sign for delivery purposes. This sign shall be no larger than six (6) square feet and shall be based on a format/template provided by Princeton University that includes the following information: Architect/Engineer's name; Contractor's name; Project and/or Project site name; and, 24-hour emergency telephone number. Any deviations require Princeton University prior approval. No Subcontractor signage is permitted.

### **CLAUSE B6 ADVERTISEMENT**

Contractor shall not display, issue or permit to be issued any professional award application, advertisement, press release, professional or scholarly journal, or literature of any kind that refers, directly or indirectly, to Princeton University or the services performed in connection with the Contract unless it first obtains the written approval of Princeton University. Contractor'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. Contractor's failure to strictly comply with the terms of this Clause B6 shall be a material breach of this Contract.

### **CLAUSE B7 PROGRESS MEETINGS**

(a) The Contractor shall arrange and conduct progress meetings at least every week or otherwise as requested by Princeton University. The Contractor is responsible for notifying the appropriate design professionals, construction forces and Subcontractors of their obligation to be represented at these meetings by individuals with authority to make commitments and to act for the concerns represented. The purpose of these meetings shall be primarily to review the progress and eliminate construction and material problems. The Contractor shall assume full responsibility to act for and commit any Subcontractor.

(b) The Contractor shall be prepared to indicate the proposed Work schedule for the period immediately following the meeting date, and to indicate anticipated difficulties for resolution by the group as a whole.

(c) The representatives of the Contractor and its Subcontractors shall bring complete, current information to each meeting relative to future job progress, as affected by equipment, material; delivery, shop drawings, inspections or other factors. Any questions not resolved during the meetings will be acted upon expeditiously by the individuals concerned.

(d) Any conclusions reached in the discussion at the meeting will be expressly for clarification and coordination of the Work and will in no way modify, alter, or otherwise affect the terms of the Contract.

(e) The Contractor shall promptly prepare and distribute in a format acceptable to Princeton University: (1) an agenda at least two (2) business days in advance of all meetings, and (2) written meeting minutes within three (3) business days after all meetings.

### **CLAUSE B8 MATERIAL AND WORKMANSHIP**

(a) All equipment, material, and articles incorporated into the Work covered by this Contract shall be new and of the grade specified.

(b) Materials specified by reference to a specific standard, such as a commercial standard, ASTM specification, NEMA or other similar standard, shall comply with requirements in the latest revision thereof and any amendment or supplement thereto

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in effect on the date of the applicable governmental approval or permit except as limited to type, class or grade, or modified in such references.

(c) The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by Princeton University and shall at once report to Princeton University errors, inconsistencies or omissions discovered. The Contractor shall not be liable to Princeton University for damage resulting from its failure to make such report of errors, inconsistencies or omissions in the Contract Documents unless the Contractor reasonably should have recognized such error, inconsistency, or omission. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to Princeton University, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

(d) Princeton University or its representatives reserve the right to reject items incorporated into the Work that fail to meet the specified minimum requirements of the standard specifications. Princeton University further reserves the right to accept non-complying items subject to an adjustment in the Contract Price.

(e) The Contractor shall obtain Princeton University's approval of the machinery and mechanical and other equipment to be incorporated into the Work. When requesting approval, the Contractor shall furnish to Princeton University the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature and rating of the machinery and mechanical and other equipment. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(f) All Work under this Contract shall be performed in a first-class manner, in strict accordance with the Contract Documents. Princeton University may require, in writing, that the Contractor remove any employee from the Project whom Princeton University deems incompetent, careless, or otherwise objectionable.

### **CLAUSE B9 SUBSTITUTIONS**

(a) The Contractor may propose alternate equipment, materials, articles, or processes ("Substitutions"). Princeton University, in consultation with the Architect/Engineer, shall be the judge of the quality and suitability of proposed Substitutions. Princeton University reserves the right to reject the request for any reason in its sole discretion, and Princeton University's decision not to approve a proposed Substitution shall not give rise to a Claim by Contractor for additional compensation. Approval by Princeton University shall not relieve the Contractor of its duty to use only equipment, materials, articles, or processes that conform to the Contract Documents in the Work.

(b) The Contractor bears the burden (and all associated costs) of proving the quality and suitability of any proposed Substitution. Such request shall be made in ample time to permit approval without delaying the Work.

(c) Contractor may offer a Substitution by submitting a written application to Architect/Engineer, in sufficient time (taking into account the progress of the Work, the period of delivery of the goods concerned and adequate time for Architect/Engineer's review), setting forth and fully identifying: (i) the proposed Substitution, together with substantiating data, samples, brochures and other supporting documentation of the substitute item proposed, including, without limitation, evidence that the proposed Substitution (a) is equal in quality and serviceability to the specified item, (b) will not entail changes in detail, schedule and construction of related Work, (c) conforms with the design of the Project and the design intent, (d) will not result in an increase in the Cost of the Work, or alternatively, will result in an increase in costs, as indicated in the application, which will be borne by Contractor; (ii) the changes in other parts of the Work required by reason of the proposed Substitution, including any cost consequences associated therewith, with any resulting increase being borne by Contractor; and (iii) a description and estimate of other costs, including operating and maintenance costs that would be affected if the proposed Substitution is approved. A copy of any such application shall be delivered to Princeton University simultaneously with its delivery to Architect/Engineer.

(d) Any additional cost arising from the use of a Substitution proposed by the Contractor shall be borne by the Contractor including redesign of, or changes to, the Drawings or Specifications or other construction documents and, without limitation, changes to other parts of the Work. The cost and time required to perform such redesign or change will be considered in evaluating the suitability of the Substitution.

(e) In no event shall the Required Substantial Completion Date or the final completion date be extended by any circumstance resulting from a proposed Substitution, nor shall Contractor be entitled to any reimbursement on account of costs related thereto, without the issuance of a Change Order approved and executed by Princeton University. Acceptance by Princeton University of a Substitution shall not relieve Contractor from responsibility for compliance with all of the requirements of the underlying Contract Documents.



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(f) Where classification, rating, or other certification by a body such as, but not limited to, UL, NEMA, or AREA, is a part of the specification for any equipment, material, article or process, proposed Substitutions shall be accompanied by reports from the listed body, or equivalent independent testing laboratory, indicating compliance with applicable specification requirements.

### CLAUSE B10 INSPECTION AND TEST

(a) All Work conducted by the Contractor is subject to the inspection and test required by Princeton University, or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction and other Legal Requirements, as defined in Clause J1(a), at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Contract. Unless otherwise provided, Princeton University shall contract for such tests, inspections and approvals with an independent testing laboratory or entity, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall make arrangements for all of the tests and inspections and shall give the testing agency, the Architect/Engineer and Princeton University timely notice of when and where tests and inspections are to be made.

(b) Such inspections and tests are for the sole benefit of Princeton University and do not:

- (1) relieve the Contractor of responsibility for providing adequate quality control measures;
- (2) relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
- (3) constitute or imply acceptance; or
- (4) affect the continuing rights of Princeton University after acceptance of the completed Work.

(c) The presence or absence of any inspector does not relieve the Contractor from any Contract requirement, nor is the inspector authorized to change any term or condition of the specification without Princeton University's written authorization.

(d) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed in order to enable the inspection and testing as may be required by Princeton University. Princeton University may charge to the Contractor any additional cost of inspection or test when Work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. The tests shall be performed in a manner that will not unnecessarily delay the Work.

(e) The Contractor shall, without charge, replace or correct Work found by Princeton University not to conform to Contract requirements, unless Princeton University consents to accept the Work with an appropriate adjustment in Contract Price. The Contractor shall promptly segregate and remove rejected material from the premises.

(f) If the Contractor does not promptly replace or correct nonconforming Work, Princeton University may, at its option, either (1) replace or correct the Work and charge the cost to the Contractor by withholding payment or otherwise, or (2) accept the nonconforming Work, in which case the Contract Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

(g) The Contractor shall assume all costs of retesting materials that fail to meet Contract requirements. The Contractor shall also assume all costs of testing materials offered in substitution for those found deficient or for those specified.

(h) If, before acceptance of the Work, Princeton University decides to examine completed Work by selective demolition, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the Work is found to be defective or nonconforming in any respect due to the fault of the Contractor or its Subcontractors, the Contractor shall bear the expenses of the examination and of satisfactory reconstruction. However, if the Work is found to meet Contract requirements, Princeton University shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the Work was thereby delayed, an extension of Contract Time, subject to the provisions and limitations of Clause E5.

### CLAUSE B11 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

(a) By executing the Contract, the Contractor represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work or its costs, and has included provision for all such conditions in the Contract Price, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, or similar physical conditions at the Site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during performance of the Work. The Contractor also represents that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Site, including all exploratory work done by Princeton University, as well as from the Drawings and Specifications made a part of this Contract. Failure by the Contractor to take the actions described and acknowledged in this paragraph will not relieve the

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Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to Princeton University.

(b) Princeton University assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by Princeton University, nor does Princeton University assume responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any of its officers or agents before the execution of this Contract, unless that understanding or representation is expressly stated in this Contract.

### CLAUSE B12 DIFFERING SITE CONDITIONS

(a) The Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency), give a written notice to Princeton University in compliance with the requirements of this Clause B12 and Clause H3 of (1) subsurface or latent physical conditions at the Site which differ materially from those indicated in this Contract or from those foreseeable at the commencement of the Work or (2) previously unknown physical conditions at the Site of an unusual nature which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract; provided that such conditions in either case could not have been ascertained by a reasonable site investigation pursuant to Clause B11 hereof.

(b) Princeton University or its representatives shall investigate the site conditions promptly after receiving the notice. If Princeton University determines that the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work under this Contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this Clause B12 and the Contract modified in writing accordingly, subject to the following provisions and limitations:

- (1) No request by the Contractor for an equitable adjustment to the Contract under this Clause B12 shall be allowed unless the Contractor has strictly complied with the notice requirements; and
- (2) If Princeton University is not given written notice prior to the conditions being disturbed, the Contractor shall be deemed to have waived its right to assert a Claim for additional time and/or compensation as a result of such changed conditions; and
- (3) The parties acknowledge and agree that any increase in the Contractor's compensation as the result of such conditions shall be limited to the necessary, actual and reasonable increased cost of the additional work, without Fee or markup for overhead or profit.

(c) If, on the basis of its investigation, Princeton University determines that the conditions at the Site are not materially different from those indicated in the Contract Documents and that no equitable adjustment in the terms of the Contract is justified, it shall promptly notify the Contractor in writing and the Contractor shall timely and properly proceed with the Work required. If the Contractor disputes Princeton University's determinations under this Section, the Contractor shall proceed with such as Disputed Work as provided in and subject to Clause J5(b) and other applicable provisions.

### CLAUSE B13 SAFETY PRECAUTIONS AND PROGRAMS

(a) The Contractor shall take all necessary precautions in the performance of the Work under this Contract to protect the safety and health of employees and members of the public. All Work shall, without limitation, comply with Occupational Safety and Health Standards (<https://www.osha.gov/>) and the Safety and Health Regulations for Construction as promulgated by the Department of Labor, and all applicable federal, state and local statutes, laws, codes, rules, ordinances, regulations, requirements, lawful orders of public and quasi-public authorities and agencies, or governments or governmental agencies or other authorities with jurisdiction over the Work or the Project, and regulations and requirements of Princeton University, including reporting requirements, concerning environmental, safety and health.

(b) Contractor shall retain onsite a written safety program in full compliance with the requirements of this Clause B13 and which meets or exceeds OSHA standards and all other applicable federal, state, and local codes, laws, regulations, rules, regulations or orders referenced above in Clause B13(a). The safety program shall be specific to the Project and Site and shall be made available to Princeton University at its request. Creation and enforcement of the safety program is the sole responsibility of Contractor. Neither any submission of the Contractor's safety program to Princeton University nor any comment by Princeton University upon such shall be deemed an approval of Contractor's safety program nor relieve Contractor of its responsibility of creating and enforcing its safety program in any regard whatsoever. By the act of commencing its Work on the Project Contractor represents that, without limitation, it has complied with all obligations under this Clause B13(b).

(c) The Contractor shall maintain an up-to-date master file of all Safety Data Sheets ("SDS") submitted by it and its Subcontractors of any tier for all materials for which an MSDS is required prior to bringing such materials onto the Site, which file shall be available for inspection at the Site. The Contractor shall retain on site a Hazardous Substance Survey Form ("HSSF") listing any and all of the hazardous materials that the Contractor may use or bring within or near the Site. At the completion of the



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Project no hazardous materials may be left at the Site without the prior written approval of Princeton University's Office of Environmental Health & Safety.

(d) This Clause B13 and Clause B14 below shall be construed in their broadest sense for the protection of persons and property by the Contractor and no action or omission by Princeton University or the Architect/Engineer shall relieve the Contractor of its responsibility for the safety of persons and property and compliance with all latest codes, laws, statutes, ordinances, rules, regulations requirements and/or orders of any public or quasi-public authority or other authorities with jurisdiction over the Work or the Project (federal, state or local) applicable to the performance of the Work, or of any of Contractor's obligations and duties hereunder.

(e) Contractor and each Subcontractor shall assign an individual responsible for its safety program and first aid and shall administer its own first aid for minor injuries and provide for medical treatment of any injured employee of the Contractor. If the Contractor has a full-time safety officer in its employ, such safety officer shall regularly visit the Site to inspect and verify the Contractor's compliance with applicable safety requirements. If the Contractor does not have a full-time safety officer in its employ, Contractor shall arrange for a qualified third-party safety consultant to regularly visit the Site to inspect and verify the Contractor's compliance with applicable safety requirements.

(f) The Contractor shall be solely responsible for the safety, efficiency, and adequacy of its plant, appliances, equipment, and methods and for any damage that may result from their failure or their improper construction, maintenance or operation.

(g) Intentionally Omitted.

(h) In the event that the Contractor fails to comply with the regulations or requirements of any applicable statute, code, law, rule or regulation, ordinance, order or other requirement referenced in this Clause B13, Princeton University has the right, but not the obligation, without limitation or prejudice to any of Princeton University's other legal or contractual rights, to issue an order stopping all or any part of the Work; thereafter, a start order for resumption of the Work may be issued at the discretion of Princeton University. Notwithstanding anything in the Contract Documents to the contrary, the Contractor shall not be entitled to an extension of the Contract Time or for compensation or any damages whatsoever by reason of, or in conjunction with, such work stoppage and hereby waives any Claim for such.

(i) Work in laboratories and animal care facilities present unique concerns and risks that require special care and advance planning of activities. The Contractor shall communicate daily with laboratory personnel and receive prior approval before the commencement of any Work. The Contractor is responsible for regularly communicating about the location and nature of the Work to be performed, as well as for ascertaining and complying with any specific safety and security policies.

(j) When sources of ionizing radiation are brought to the Site for the purposes of non-destructive testing (e.g., nuclear density gauges, x-ray radiography, etc.) or for any other purpose, the Contractor shall meet all state and federal regulatory requirements, including requirements for posting and for establishing exclusion zones. When RF transmitters (e.g., cell base stations, paging installations, etc.) are installed at the Site, the Contractor shall perform a radiation survey after the installation to ensure that RF radiation levels comply with NJDEP and FCC requirements. Additionally, the Contractor shall notify Princeton University's Office of Environmental Health and Safety if the Work involves any type of radiation source.

### **CLAUSE B14 PROTECTION OF THE WORK AND ADJACENT PROPERTY DURING CONSTRUCTION OPERATIONS**

(a) The Contractor shall protect any existing building areas, materials, supplies, and equipment of every description, all new materials and apparatus being installed hereunder and the work, materials, or apparatus employed or provided by others, including Princeton University. All requests to enclose or specially protect such property shall be strictly complied with. If, as determined by Princeton University, building areas, material, equipment, supplies, and work performed are not adequately protected by the Contractor, such property may be protected by Princeton University and the cost thereof may be charged to the Contractor or deducted from payments due.

(b) The Contractor shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and final acceptance, whether or not the same has been covered in whole or in part by payments made by Princeton University.

- (1) Materials shall be stored so as to ensure the preservation of their quality and fitness for the Work and shall be located so as to facilitate prompt inspection. When considered necessary, they shall be placed on wooden platforms or other hard, clean surfaces and not on the ground, and when directed, shall be placed in weatherproof buildings.
- (2) Stored materials, even though approved before storage, shall be inspected prior to their use in the Work and shall meet the requirements of the specifications at the time it is proposed to use them.

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- (3) As portions of the Project are completed and occupied, Contractor shall insure that continuing construction activity will not unreasonably interfere with the use, occupancy, and quiet enjoyment of the completed portions. Contractor will permit other contractors who are performing other work in the Project access to the Project so long as the work by such other contractors does not unreasonably interfere with the performance of the Work under this Contract.

(c) The Contractor shall preserve and protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the Site. The Contractor shall be liable, by withholding of payment or otherwise, for all unauthorized cutting or damaging of trees and shrubs, including damage due to careless operation of equipment, stockpiling of materials or tracking of grass areas by equipment.

(d) The Contractor shall, under regulations prescribed by Princeton University, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by Princeton University. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

### **CLAUSE B15 EMERGENCIES ENDANGERING PERSONS OR PROPERTY**

In the event of an emergency affecting the safety of life or property, including adjoining property, the Contractor, without special instructions or authorization from Princeton University, is authorized to act at its discretion to prevent such threatened loss or injury. Contractor shall likewise act if instructed to do so by Princeton University. Any compensation claimed by the Contractor on account of such emergency work will be determined by Princeton University as provided in Section H - Changes in the Work and/or the Contract.

### **CLAUSE B16 HAZARDOUS MATERIALS DISCOVERED ON THE SITE**

(a) In the event the Contractor encounters on the Site material reasonably believed to constitute an environmental hazard, including but not limited to asbestos, mold, soil contamination, underground storage tanks, construction debris (e.g., non-native soils), the Contractor shall immediately stop work in the affected area and report the conditions to Princeton University and the Architect/Engineer in writing. Princeton University will be responsible for testing, abatement and/or mitigation as required by current state and federal regulations. The Work in the affected area shall be resumed only after the Contractor has received written notice from Princeton University that the environmental hazard has been removed, abated, and/or resolved using the applicable current state and federal regulatory standards.

(b) In the event the Contractor encounters lead-based paint in target housing (as defined by the Princeton University Office of Environmental Health and Safety) or child-occupied facilities that needs to be disturbed, the Contractor shall notify Princeton University and the Architect/Engineer in writing and comply with the requirements of 40 CFR Part 745, Part E, Environmental Protection Agency Renovation, Repair and Painting Rule. Certified Lead Renovator documentation for the Contractor and all affected Subcontractors shall be provided upon request by Princeton University.

### **CLAUSE B17 SPILLS OR DISCHARGE OF CONTAMINANTS BY CONTRACTOR**

(a) The Contractor is solely responsible for any and all spills or discharges of contaminants into the environment during the performance of this Contract that occur as a result of, or are contributed to, by the actions of its agents, employees, or Subcontractors. The Contractor is responsible for the immediate notification to the NJDEP Spill Hotline (1-877-927-6337), the US EPA or any other required agency and Princeton University of a discharge to the environment of any contaminant. In the event of such a discharge, the Contractor shall be responsible for thorough remediation of the discharge to the satisfaction of Princeton University and in a manner that complies with the applicable federal, state, and local laws and regulations and all Legal Requirements. The clean-up and all relevant written reports to applicable regulatory agencies shall be at no cost to Princeton University.

(b) The Contractor shall submit a written follow-up report to Princeton University's Project Manager not later than 24 hours after the initial notification. The written report shall be in narrative form and, at a minimum, shall include the following:

- (1) Description of the item spilled (including identity, quantity, manifest number (if applicable), etc.).
- (2) Whether the amount spilled is required to be reported to the US EPA, NJDEP or other federal, state or local agency and if so, whether it was reported (and a summary of the communication and any applicable case numbers assigned).
- (3) Exact time and location of the spill including a description of the area involved.
- (4) Containment procedure initiated.

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- (5) Description of clean up procedures employed, or to be employed, at the Site including the location of the spill residues which shall be located by standard GPS methods for future reference.
- (6) All formal reports and documentation to the relevant regulatory agency.
- (7) All Subcontractor and/or supplier names, addresses, current telephone numbers, as well as any relevant insurance coverage for each company.

(c) In all cases in which a spill or discharge of contaminants into the environment is required to be reported to Princeton University pursuant to paragraph (a) of this Clause B17, Princeton University reserves the option and right to take over and complete the cleanup of the spill or discharge without the assistance of the Contractor. This right may be exercised at the sole discretion of Princeton University. All reasonable costs incurred by Princeton University in the cleanup of such spills or discharges will be offset against amounts owed or payable to the Contractor under this and other contracts with Princeton University. If such amounts are not sufficient to cover all reasonable costs of the spill cleanup, the Contractor shall promptly pay any deficiency amount to Princeton University upon demand.

### **CLAUSE B18 SOIL MANAGEMENT PROCEDURES**

(a) Prior to delivering to the Work Site any imported soils used during construction for any purpose, the Contractor shall provide the following for Princeton University's review and written approval:

- (1) Documentation stating that the soil is certified clean by current NJDEP standards under the most stringent cleanup standards applicable (i.e., appropriate number of samples taken relative to volume delivered), including the analytical testing results used to certify cleanliness by an appropriate NJDEP certified laboratory.
- (2) Place of origin, type of origin site (industrial, residential, etc.).
- (3) The names, addresses, and appropriate licenses associated with soil management for the Contractor and all relevant Subcontractors.

(b) Prior to exporting any soil from the Work Site, the Contractor shall provide written notification to Princeton University, allowing sufficient time for testing by Princeton University and the receipt of analytical results. Princeton University shall have approval of the final disposal site. The Contractor shall also provide written confirmation of the final disposal site along with any required supporting documentation.

(c) In the event that the Contractor encounters any material it should reasonably understand to be non-natural soils, the Contractor shall immediately stop work in the affected area and report the conditions to Princeton University and the Architect/Engineer in writing. Princeton University will be responsible for testing any non-natural soils or materials. The Work in the affected area shall be resumed only after the Contractor and Princeton University have agreed on a written plan for removing and/or remediating the affected soil to the applicable current state and federal standards.

### **CLAUSE B19 BUILDING COMMISSIONING PROCESS**

When building commissioning (construction phase) requirements are specified in the Contract Documents, a Project-specific commissioning plan, or both, the Contractor shall (1) comply with such requirements, (2) incorporate specific commissioning activities and milestones into the Project Schedule, and (3) ensure that Subcontractors comply with such requirements.

## **SECTION C -- CONSTRUCTION PRACTICES AT THE SITE**

### **CLAUSE C1 FIGHTING, VANDALISM, INAPPROPRIATE BEHAVIOR, NO HARASSMENT**

(a) Fighting, destruction of property, vandalism, graffiti, littering, horseplay of any kind, inappropriate behavior or language, or any action, act, or conduct deemed by Princeton University to be detrimental to the dignity and decorum of Princeton University are strictly prohibited.

(b) Contractor shall take all necessary steps to ensure that none of its employees or Subcontractors' employees engage in harassment, intimidation, coercion, or verbal abuse relating to race, creed, color, sex, gender identity or expression, age, national origin, ancestry, religion, physical or mental disability, veteran status, marital or domestic partnership status, affectional or sexual orientation and/or other legally protected characteristics of anyone on Princeton University's premises.

(c) If such conduct occurs, Contractor will take all necessary steps to stop it and prevent its future occurrence, including, but not limited to, the immediate dismissal or transfer of personnel. This policy will be strictly enforced.

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### CLAUSE C2 NO WEAPONS, ALCOHOL, DRUGS, SMOKING

(a) The use, possession, distribution, or sale of any weapon, alcohol, or illegal drug or controlled substance while on Princeton University property or while engaged in performing services for Princeton University is strictly prohibited. Offenders shall be immediately removed from Princeton University property.

(b) Smoking and/or carrying a lighted cigarette, cigar, or pipe is prohibited inside any existing or new (under construction) building, structure, or facility on Princeton University property. The Contractor shall enforce this policy on the Site at all times.

### CLAUSE C3 DISPOSAL AND SALVAGE

(a) Materials and items designated by Princeton University to be salvaged, whether or not such materials and items are specified or indicated on Drawings to be salvaged, shall be delivered to Princeton University at a location as directed.

(b) Items designated for reuse shall be salvaged, refurbished, and suitably stored until reuse.

(c) The Contractor shall develop, submit for approval and execute all recycling, salvage and/or removals of materials in accordance with a Construction Waste Management plan.

(d) The Contractor shall not use Princeton University dumpsters.

### CLAUSE C4 CLEANING UP

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the Work, the Contractor shall remove from the Site and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of Princeton University. Upon completing the Work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to Princeton University. If the Contractor fails to clean up as provided in the Contract, Princeton University may after 24 hours' prior written notice, do so and the cost thereof shall be paid by the Contractor or deducted from amounts otherwise payable to the Contractor.

### CLAUSE C5 JOB CONDITIONS - TEMPORARY FACILITIES AND SERVICES

(a) **Electric Power, Steam and Water.** Electric power, steam, and water, in quantities sufficient for the Contractor's requirements for performing the Work, will be furnished by Princeton University without charge. The Contractor shall provide, install, and maintain all equipment connections and temporary lines necessary to tie into Princeton University services in a manner designated by Princeton University, and to convert the services in a manner that makes it useful for construction operations. The Contractor shall give advance written notice before interrupting essential services in accordance with Clause C7. No temporary lines shall be disconnected or removed until approved by Princeton University.

(1) Electric power so furnished will be 120 or 208 3-phase at a location designated by Princeton University.

(2) Potable water so furnished will be from a location designated by Princeton University within a reasonable distance from the Work.

(3) Steam will be made available for use by the Contractor, if requested, and if steam lines are within close proximity of the Work.

(b) **Telephone/Internet.** Princeton University will act as the Contractor's ISP. Princeton University will provide the Contractor an external customer network as described on Princeton University's web site at <http://www.net.princeton.edu/external-customer-networks.html>. The Contractor will be given a range of IP addresses that can be used for this purpose. The Contractor shall provide all devices and IT expertise to install and maintain service for it and its Subcontractors unless otherwise specified by Princeton University. The Contractor shall also comply with Princeton University and industry best practices regarding IT security so as to prevent malicious/viral content residing on the Contractor's/Subcontractor's devices from entering Princeton University's domain.

(c) **Transportation of Equipment and Materials.** Unless otherwise specified, it shall be the Contractor's responsibility to transport to, load and unload at the Site all equipment and materials used by the Contractor.

(d) **Temporary buildings (storage sheds, shops, offices, etc.).** Temporary buildings may be erected by the Contractor only with the approval of Princeton University and shall be built with labor and materials furnished by the Contractor. The Contractor is responsible for all permits associated with temporary buildings. Such temporary building and/or utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the Work.

(e) **Temporary Heating.** When necessary, and subject to the prior approval of Princeton University, the Contractor shall provide temporary heating to protect all the Work and materials against dampness and cold, to dry out work and to facilitate the completion of the Work. The Contractor shall maintain any critical installation temperatures called for in the Specifications for the various branches of the Work in those spaces where such work is being performed. The maintenance of proper heat and

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ventilation is the responsibility of the Contractor. Any Work damaged by inadequate heat and/or ventilation shall be replaced to the satisfaction of Princeton University and at the expense of the Contractor.

- (1) Prior to using the permanent heating system specified under the Contract for temporary heating purposes, the Contractor shall prepare and submit to Princeton University for approval a plan which describes the protection, maintenance and cleaning of the system during and at the conclusion of construction. The permanent heating equipment used for temporary heat, when no longer required for such purposes, shall be thoroughly checked, reconditioned and repaired as necessary to bring it to the standards required by the specification at no cost to Princeton University. Additionally, use of the permanent heating system for temporary heat during construction does not relieve the Contractor of its responsibility for any required flushing, cleaning, testing, warranty or commissioning in accordance with a pre-approved commissioning plan. If the permanent heating system is used, the Contractor shall have all air filtration equipment in place before operating the system, and shall provide a new, clean set of filters prior to Substantial Completion. These filters shall not be the spares supplied with the system.
  - (2) Temporary electrical power for construction purposes shall not be used as fuel for electrical resistance heaters except when such units are built into the structures and/or their use is approved by Princeton University.
  - (3) All installations required for temporary heating and/or ventilation shall be removed by the Contractor when no longer required.
- (f) **Temporary Lighting.** The Contractor shall install and maintain temporary lighting throughout the performance of the Work to enable all trades to adequately perform their work and conform to safety and security requirements, including those of Princeton University.
- (g) **Sanitary Facilities.** The Contractor shall furnish, install, and maintain ample sanitary facilities for the workers. As the needs arise, a sufficient number of enclosed temporary toilets shall be conveniently placed as required by the federal Department of Labor "Safety and Health Regulations for Construction" and the Princeton University-approved site logistics plan (when a site logistics plan is required). Drinking water shall also be provided from an approved source, so piped or transported as to keep it safe and fresh and served from single source containers or satisfactory types of sanitary drinking stands or fountains. All such facilities and services shall be furnished and maintained in strict accordance with existing and governing health/sanitary regulations. Use of existing Princeton University facilities is not permitted unless specifically authorized in writing in advance by Princeton University. All temporary sanitary facilities provided by the Contractor shall be removed at the time of Substantial Completion.
- (h) **Temporary Fire Watch and Security.** The Contractor shall be responsible for submitting a plan to Princeton University, where appropriate, for a temporary fire and/or security watch. Such plan shall be implemented by the Contractor following approval by Princeton University.

### CLAUSE C6 USE OF FACILITIES/SITE

Contractor and Subcontractor employees at any tier are prohibited from using all Princeton University facilities (e.g., lavatories, gymnasium, cafeteria, parking areas, etc.), unless otherwise approved in advance by Princeton University. The Contractor shall confine all operations (including storage of materials) on Princeton University premises to areas authorized or approved by Princeton University.

### CLAUSE C7 UTILITY SHUTDOWNS

Seven (7) days prior to any required utility shutdown, the Contractor shall submit written notification to Princeton University requesting the shutdown. The Contractor shall arrange its work so the number of shutdowns and the period of each shutdown will have minimum impact on Princeton University. The Contractor is responsible for coordinating with local municipalities to determine any other notification and/or permit requirements.

### CLAUSE C8 ALTERATION WORK

- (a) No cutting or alteration work shall be initiated until schedule of operation is approved by Princeton University. Proper protection shall be provided around all areas in which demolition or alteration work is to be carried on so as to prevent dirt or dust from entering active portions of the Project.
- (b) The alteration work shall consist of all modifications necessary to existing facilities to accommodate the new construction and alterations as shown or specified, including all work as is reasonably inferable from the specific Work shown or specified in order to produce a complete job ready for Princeton University's operations.



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- (c) Mechanical and electrical Subcontractors shall make all necessary arrangements with the Contractor for performance of temporary protection and patching work, including painting, for which they are responsible.
- (d) Equipment, fixtures or apparatus not to be reused shall be delivered to Princeton University at a location on the premises designated by Princeton University, unless Princeton University specifically states that it does not want the equipment, fixtures or apparatus, in which case the Contractor shall remove them from the premises.
- (e) Where equipment, fixtures or apparatus are removed from back of finished surfaces, the existing piping, conduit or ductwork shall be capped or sealed so as to permit patching and refinishing of these surfaces. Where required, cover plates shall be installed to identify these locations. Where existing electrical equipment, fixtures, or apparatus are removed, the existing wiring, conduit, etc., shall be removed back to the nearest junction box where leads shall be properly insulated and terminated in an approved manner.
- (f) Where piping, valves, conduit, ductwork, etc., are required to be removed, altered, or tapped for new connections or extensions, disconnecting and removal work shall be done in such a manner as to prevent damage to the remaining work, the buildings, or its contents. Wherever remaining work, equipment, materials or finishes are damaged in making such removals, the Contractor shall be responsible for the full resulting cost. No existing piping, fittings, or valves, conduit, wire, switches, and other related work, once removed, shall be permitted to be reused unless specifically so provided in the Contract. Where parts of existing systems are altered, the remaining systems shall be balanced as required for proper operation. Wherever existing pipe or duct covering or insulation is removed on existing work which is required to remain, such covering or insulation shall be replaced with new covering of a kind similar to that existing.
- (g) The Contractor shall do all cutting and patching which may be necessary to complete the Work, except that no structural members shall be cut or notched so as to interfere with the structural integrity of the structure without specific approval of the Architect/Engineer or Princeton University.
- (h) All patching and refinishing shall be done with materials and in such manner as to match adjoining work. Patching shall be assigned to, and done by, the appropriate trade. Refer to additional requirements relating to cutting and patching elsewhere in the specifications.

### **CLAUSE C9 INGRESS, EGRESS, AND CIRCULATION**

- (a) Contractor shall be responsible for performing construction activities in such manner to maintain essential ingress and egress for visitors and occupants of Princeton University-occupied areas including freight traffic, and to continuously maintain all required emergency exits from and circulation between existing facilities. Passageways for emergency exits shall be kept continuously free from debris, construction equipment, tools, stockpiles of materials, and other hazards to allow speedy evacuation. The Contractor shall provide all necessary temporary work, including overhead protection, barricades, walks, lighting, heating, handrails, crosswalks, directional signs and other temporary safety measures as prudence and good practice may dictate and in accordance with Legal Requirements, to obtain and maintain all such ingress, egress and circulation requirements. All temporary Work shall be removed when no longer required and the affected property, including interior and exterior work, finishes, paving, and landscaping shall be restored.
- (b) At all times, the Project shall be maintained clean and free of all snowfall so as to allow the Work and inspection of the Work to proceed.

### **CLAUSE C10 SHORING AND BRACING**

- (a) It shall be the responsibility of the Contractor to design, provide, and maintain sufficient and adequate shoring and bracing of any existing structure or earth bank during the performance of Work under this Contract. Shoring and bracing shall comply with all applicable codes, regulations and construction requirements, including OSHA requirements, and shall be constructed in such a manner as will prevent all deflection, settlement, and movement of any existing structure or earth bank, and will permit the Work to be performed without damaging any existing structure.
- (b) The Contractor shall provide all permanent and temporary bracing, shoring, anchoring, and needling that the nature of the Work may require, in order to make any new construction stable, secure, and safe, even where such items are not specifically called for.
- (c) Barricades and lights shall be furnished by the Contractor, as necessary, to meet safety requirements.

### **CLAUSE C11 WEATHER CONDITIONS/WORK IN FREEZING WEATHER**

- (a) In the event of suspension of the Work, or during inclement weather, or whenever Princeton University shall direct, the Contractor will, and will cause Subcontractors to, protect carefully the Work and materials against damage or injury from the weather. If, in the opinion of Princeton University, any Work or materials shall have been damaged or injured by reason of failure

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on the part of the Contractor or any Subcontractors so to protect the Work, such Work and materials shall be removed and replaced at the expense of the Contractor.

(b) Unless written permission is given, Work liable to be affected by frost shall be suspended during freezing weather. When Work proceeds under such a condition, the Contractor shall provide approved facilities for heating the materials and for protecting the finished Work.

### CLAUSE C12 PUMPING AND DRAINAGE

The Contractor shall provide all pumping and drainage of water from within the areas of the Work until acceptance of the Work. Discharge shall be into existing storm drains unless otherwise approved by Princeton University. The Contractor shall keep all areas dry as required for the installation of all Work and shall prevent damage to the Work already installed, including adjacent property.

### CLAUSE C13 EXPLOSIVES

The use of explosives will not be permitted without express written approval of Princeton University. In the event that Contractor believes and determines that use of explosives rather than other excavation and/or rock removal methods would provide cost savings or other benefit to Princeton University, Contractor may propose use of explosives as a Substitution in accordance with Clause B9 hereof. In support of its explosives proposal, in addition to the submission requirements of Clause B9, Contractor shall submit a detailed explosives use plan which shall include, but not be limited to: (i) a detailed description of the type and size of explosive charges, proposed locations, and methodology for placement and detonation; (ii) a proposed schedule for all explosive use; (iii) a detailed safety plan; (iv) a detailed plan to protect all adjacent and potentially affected existing structures, landscape and hardscape, and the Work itself; and (v) the qualifications, references and licenses of the proposed explosives Subcontractor, together with proof of insurance for all risks related to use of explosives.

### CLAUSE C14 LAYOUT OF WORK

The Contractor shall lay out its Work from base lines and benchmarks indicated on the Drawings, and shall be responsible for verification of all measurements in connection with the layout. The Contractor shall furnish all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the Work. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by Princeton University until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, Princeton University may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

### CLAUSE C15 NOISE

(a) Contractor shall not create excessively loud noise during construction operations that will cause discomfort to the surrounding building occupants and community. Operations that create excessively loud noise, as determined by Princeton University, will be reviewed with, and have prior approval from, Princeton University.

(b) Measures to lessen construction/demolition noise will be reviewed with Princeton University, with agreed upon measures to be implemented by the Contractor at no cost to Princeton University.

(c) Contractor shall take whatever actions necessary to limit other types of non-construction noise by vehicles, Contractor and Subcontractor employees (including workers' voices), material deliveries, and power hand tools. Radios (entertainment type) are not to be played on the Site.

(d) **Noise Restriction Periods.** The start of construction and related noise is prohibited during the following time periods:

- (1) Sunday in its entirety.
- (2) Before 9:00 a.m. and after 6:00 p.m. on Saturdays.
- (3) Before 8:00 a.m. and after 6:00 p.m. on weekdays. Where conditions permit and noise will not impact residential programs, Princeton University may authorize start times as early as 7:00 a.m.

A variance permit from the municipality having jurisdiction and/or prior approval from Princeton University is required for all construction Work outside of these time periods. Where a conflict exists between local ordinances and Princeton University policy, the more stringent restriction shall apply.

(e) Princeton University may, at its discretion, prohibit or restrict Work from being performed during certain events (e.g., "Reunions", "Commencement", "P-Rade", etc.) when noise, traffic and security concerns dictate.

### CLAUSE C16 VEHICLE IDLING

The Contractor shall enforce a no-idling policy for construction vehicles serving the site.



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### CLAUSE C17 PARKING

Employees of the Contractor and all Subcontractors shall park at a designated off-campus Princeton University location. With special exception and prior Princeton University approval, on-site parking may be provided for shuttle vehicles. The Contractor is responsible for managing the transportation of workers to and from the site. Parking at non-designated locations, such as public spaces, metered or free, is prohibited.

### CLAUSE C18 EXISTING BUILDING ACCESS CONTROL/SECURITY AND FIRE ALARM SYSTEMS

(a) **Existing Building Security System.**

- (1) Contractor shall comply with Princeton University Department of Site Protection and Public Safety Department protocols and approval processes before disarming, altering, rendering inoperable or otherwise performing any work on existing building security systems.
- (2) If any existing building access control/security system is disturbed, altered, or relocated during the course of the Work, the entire security system shall be tested by the Contractor and approved by Princeton University's Alarm Shop prior to acceptance of the Work.
- (3) The Contractor shall not tape any door latches, prop open doors and/or windows normally locked without prior approval of Princeton University's Department of Public Safety and notification to Princeton University's Department of Site Protection and building occupants.
- (4) Contractor shall be responsible for the sign out, distribution, safe use, and return of all keys and/or access cards for the existing building. The Contractor shall be responsible for all costs associated with failure to return these items (e.g., the cost to re-key/re-implement the system, etc.).
- (5) Contractor shall coordinate with Princeton University's Department of Site Protection to commission all new access control/security systems. All new access control/security installations and/or systems shall be tested by the Contractor and approved by Princeton University's Department of Site Protection prior to acceptance of the Work.

(b) **Life Safety Systems (i.e., fire alarm, sprinkler, special hazard, fire door, etc.).**

- (1) Contractor shall not disarm, disable or impair any campus life safety system. Only designated personnel from Princeton University's Department of Site Protection are authorized to do so.
- (2) Contractor shall not perform any work on active life safety systems, or commence on-site work that may cause smoke or dust in the vicinity of active fire alarm devices, unless the affected systems/devices are disabled. Contractor shall request a life safety system impairment prior to engaging in such activities.
- (3) Contractor shall request life safety system impairments through the Princeton University Project Manager a minimum of two (2) business days prior to the start of work.
- (4) If an existing fire alarm system or device has been altered in any way, all affected areas shall be pretested by the Contractor prior to acceptance testing by the local AHJ and the designated Department of Site Protection representative.

### CLAUSE C19 CONSTRUCTION FENCE

(a) Contractor shall furnish, install, and maintain all required temporary construction fencing as may be required by Princeton University. Construction fence height shall be in accordance with local ordinances and shall not have any barbed or razor wire. Fence shall be installed with driven posts (not metal shoes), unless otherwise approved by Princeton University. Fence shall include a vision obscuring screening material of the heaviest weight available installed on the outside of the fence. The fence and vision obscuring screening material shall be maintained to the satisfaction of Princeton University. The fence shall not have any openings or gaps where unauthorized entry could be made.

(b) Princeton University will provide Contractor padlocks with orange construction core and keys for use on Site construction fence gate(s). Lock(s) and keys shall be returned to Princeton University when the Work is completed. Non-Princeton University locks shall not be used without prior Princeton University approval.

### CLAUSE C20 UTILITY MARK OUT

Pursuant to New Jersey state law, Contractor shall notify the New Jersey One Call System (1-800-272-1000) a minimum of three (3) working days prior to any excavation on or near the Site. Excavation means any operation in which earth, rock, or any other material in the ground is moved, removed, or otherwise displaced by means of any tools, equipment, or explosive, and includes but is not limited to drilling, grading, boring, milling, trenching, tunneling, scraping, tree and root removal, cable or pipe plowing,

fence post or pile driving, tent stake installation, and wrecking, razing, rending, or removing any structure or mass material.. The New Jersey One-Call System will notify the appropriate mark-out service firm Princeton University has under contract and any public utility mark-out service firms, who will in turn inspect the area and mark out any underground utilities.

## **SECTION D -- RESPONSIBILITIES**

### **CLAUSE D1 RESPONSIBILITIES OF THE ARCHITECT/ENGINEER**

(a) If an Architect/Engineer has been retained by Princeton University under a separate contract with Princeton University, such Architect/Engineer shall be a representative of Princeton University in the administration of the Contract to the extent provided in these Terms and Conditions and in the separate contract between Princeton University and the Architect/Engineer. Pertinent excerpts from this separate contract will be provided upon request, with redactions made by Princeton University in its discretion. If no Architect/Engineer has been retained by Princeton University, then these responsibilities shall be performed by Princeton University.

(b) The Architect/Engineer has no authority, without written authorization of Princeton University, to modify this Contract in any respect, to issue Change Orders hereunder, to order extra Work not required by the Contractor, to authorize extra compensation to the Contractor, to waive the performance by the Contractor of any requirements of the Contract, or to provide approvals or authorizations which are reserved for Princeton University under this Contract.

(c) Whenever the Drawings or Specifications are ambiguous or silent as to what is permissible, the Architect/Engineer shall, for the purpose of Contractor's performance under the Contract, provide the controlling interpretation in writing of what satisfies the Contractor's obligations for any particular requirements of the Drawings or Specifications, which the Architect/Engineer shall make, in the absence of any agreed time limit, within a reasonably prompt time. Either Princeton University or Contractor may make written request to the Architect/Engineer for such interpretations of the Drawings or Specifications.

(d) Notwithstanding anything in the Contract to the contrary, disputes and other matters in question between Contractor and Princeton University relating to the interpretation of the Drawings or Specifications shall first be referred to Architect/Engineer for an initial interpretation, subject to the remaining provisions of the Contract.

(e) All interpretations and decisions of Architect/Engineer shall be consistent with the intent of the Drawings or Specifications. Such interpretations and decisions will be in writing or in the form of drawings and shall be made in a reasonably prompt manner.

(f) For the purpose of Contractor's performance under the Contract, Architect/Engineer will be the judge of whether the Work is in conformity with the Drawings and Specifications and shall recommend that Princeton University reject Work that does not conform to the Drawings or Specifications. Whenever, in their opinions, Architect/Engineer or Princeton University considers it necessary or advisable for the implementation of the intent of the Drawings or Specifications, Princeton University shall have the authority, or the Architect/Engineer, after Princeton University's approval, shall have authority, to slow or stop the Work whenever any stoppage may be necessary to assure proper execution of the Drawings and Specifications. However, neither Architect/Engineer's authority to act under this Clause D1, nor any decision made in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of Architect/Engineer or Princeton University to Contractor or any other person performing any of the Work.

(g) All interpretations or decisions of the Architect/Engineer interpreting the Drawings or Specifications or relating to the execution and progress of the Work shall be final and binding upon the Contractor as to the implementation of the Drawings and Specifications for the performance of the Work unless otherwise required or ordered by Princeton University. The Contractor shall notify Princeton University and the Architect/Engineer promptly of any exception taken to such decision or interpretation of the Architect/Engineer. Any such notice given by the Contractor shall indicate whether Contractor intends to assert a Claim for additional cost or an extension of Contract Time because of such interpretation. Contractor shall present such Claim to Princeton University in accordance with the provisions of Clause J3. Any request for extension of Contract Time shall be submitted in accordance with the requirements of Clause E5 or E6 as applicable.

(h) Both Princeton University and Architect/Engineer will not be responsible to Contractor for and will not have control or charge of Contractor's construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for Contractor's failure to carry out the Work in accordance with the Drawings and Specifications or all construction documents. However, the Architect/Engineer shall observe, review and report to Princeton University with regard to construction methods that may impact the intent of the Drawings and Specifications and other construction documents. Both Princeton University and Architect/Engineer will not be responsible to Contractor for or have control or charge over the acts or omissions of Contractor, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

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(i) For the sole benefit of Princeton University and not Contractor in any manner, Architect/Engineer will observe the Work to ascertain if the Work is being performed in accordance with the Drawings and Specifications and the intent of same and all other construction documents.

### CLAUSE D2 SUBCONTRACTS

(a) The Contractor may subcontract any work at the Site, subject to the prior written approval of Princeton University. The Contractor shall select Subcontractors (including suppliers) on a competitive basis to the maximum practicable extent consistent with the objectives and requirements of the Contract. The Contractor shall not engage in any practice that, in the judgment of Princeton University, lacks sound business principles or integrity.

(b) Contractor shall be responsible to Princeton University for the acts and omissions of its employees, agents, Subcontractors and their agents and employees, and other persons, performing any of the Work under any agreement with Contractor or its agents and Subcontractors, or otherwise.

(c) The Contractor shall include provisions identical to these general terms and conditions in all Subcontracts and the Subcontractors shall have the same obligations to the Contractor that the Contractor has to Princeton University under the Contract.

(d) Each Subcontract shall include an express provision that Princeton University is an express third-party beneficiary of the Subcontract with the right to enforce the Subcontract for the benefit of Princeton University.

(e) The Contractor shall, upon request, provide to Princeton University complete and correct copies of Contractor's Subcontract with each Subcontractor, including changes thereto, for Princeton University's information and records but not for approval. Princeton University makes no representation that Princeton University is reviewing the Subcontract's substance or approving the Subcontract in any way.

(f) The Contractor shall not extend any limitation of liability to any of its Subcontractors.

(g) If this is a Guaranteed Maximum Price (GMP) contract or Cost Plus Fixed Fee (CPFF) type contract, refer to Clause L1 for additional duties and requirements.

### CLAUSE D3 CAPITAL PROJECT MANAGEMENT SYSTEM (CPMS)

(a) **System Overview.** Princeton University requires all Contractors and Architect/Engineer to participate in a web-based project management application. The application is hosted on Princeton University servers that are maintained by Princeton University staff. The web application is customized by Princeton University and provides for a unique web page for each project. It is the intent for all documentation, correspondence, construction information and workflows that would normally be exchanged between members of the Project team to be maintained in an electronic format and posted on the project web site.

(b) **Minimum System Requirements.** The following summarizes the minimum office system requirements for all Contractors and Architect/Engineer to possess in order to participate. It is the responsibility of all Contractors and Architect/Engineer to possess these minimum requirements at no additional cost to Princeton University.

(1) Hardware/Software Requirements:

- Any computer capable of running an operating system and web browser
- Microsoft Windows 7 SP1, 8.x 8.x/RT or later; Apple OSX-9 or later; and most versions of Linux, Android and IOS
- Broadband Internet and/or wireless connection

(2) The downloadable tools are available at no cost on Princeton University's server. Self-service IT support may be required.

(3) Training sessions will be provided on campus by Princeton University at no cost. Users should allow approximately 3 hours of training per person.

(4) Contractor should not assume there to be software integrations between CPMS and outside services.

(c) **Responsible Users / Project Team Members.** All users who are responsible for, or wish to retain individual ownership rights to, Project specific documentation, correspondence, Drawings, or other information will be considered an individual entity on the Project team, and will be required to attend training.

(d) **Roles and Responsibilities.** The following demonstrates the required level of involvement and contribution to the CPMS process:

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- (1) All Team Members. All documentation required by the Contract, except for specific types defined by Princeton University representative(s), must be posted electronically to the CPMS. The CPMS requires compliance with document management protocols which govern, for example, file naming, versioning control, format type and maintaining links to associated files. Daily activities in the CPMS will include working with the following:
  - (i) Document Libraries. Posting an electronic copy of all documentation to the appropriate library, selecting suitable document attributes from the predefined list, managing personal alerts and initiating internal CPMS e-mail notifications to audience members. Other than .DWG drawing files, the preferred document format is Adobe.PDF, with pages individually named, bundled into sections and bookmarked. Other document management protocols set limits for individual file sizes, requiring that large document “volumes” be broken into logical parts.
  - (ii) Activities/Workflows. Initiating and responding to workflows as your team role requires (i.e., initiating submittals, electronically marking-up reviewed submittals, responding to technical reviews, creating RFIs, maintaining Subcontractor information logs and compiling linked records for O&M submission).
- (2) Contractor. The Contractor will represent all Subcontractors when engaging in the CPMS. The Contractor may, at their discretion, employ their own project management platform as a complement to, but not in lieu of, the CPMS. The CPMS includes two unique features dedicated to the collection of operations and maintenance documentation (also known as turnover documents). These features are:
  - (i) Document Archive Library. A location for as-built drawings, as-built schedules of many types as well as other documents that provide as-built information for maintainable assets and systems. The Contractor is required to collect the as-built drawings from the Subcontractors and create new as-built schedules from submittal data.
  - (ii) Building Elements List (BEL). A database of all maintainable elements/systems. The Contractor, with Princeton University guidance, will develop this project specific list utilizing built in CPMS features to link BEL elements to related submittals and other documents.
- (3) Architect/Engineer. During the course of the Project, the Architect/Engineer shall post all Contract Documents to the CPMS. Princeton University requires adherence to CAD standards and specific formats for certain drawing elements (e.g., equipment, finish, and door schedules). Design reviews will be tracked in the CPMS and the Architect/Engineer shall respond to and acknowledge comments as they occur. With the exception of physical samples, the Architect/Engineer shall post an electronic version of all submittals. At Project completion, the Architect/Engineer shall post a final set of Drawings in DWG format that are compliant with Article XIV of the Design Services Contract for the Project, Archive Drawings and Specifications as a duplicate set of PDF files organized in the aforementioned format, page named, bundled and bookmarked. BIM files, when applicable, will be posted on Princeton University’s BIM360Glue platform.

### SECTION E -- CONTRACT TIME: SCHEDULES, DELAYS, AND EXTENSIONS OF TIME

#### CLAUSE E1 PROJECT SCHEDULE

- (a) **Initial Submission.** Unless the Project Schedule (as defined in paragraphs (b), (c), (d) and (e) hereof) has been prepared by the Contractor, approved by Princeton University, and made part of the Contract at the time of its execution, the Contractor shall, within ten (10) days of the Effective Date of the Contract, or such longer period of time approved by Princeton University, prepare and submit to Princeton University for approval a proposed Project Schedule showing how the Contractor proposes to perform the Work and meet any completion or milestone dates required by the Contract Documents. If the Contractor fails to submit a proposed Project Schedule within the time prescribed, Princeton University may withhold payment until the Contractor submits the required proposed Project Schedule. Princeton University’s approval of the Contractor’s proposed Project Schedule shall be in writing and such approval shall not be construed as acceptance of Contractor’s assumptions, calculations of task durations, logic, or any other metrics or methodology thereof, nor shall Princeton’s approval constitute an assumption by Princeton University of any responsibility for the Project Schedule or for any error or inconsistency, which shall be corrected by the Contractor at no additional expense to Princeton University.
- (b) **Project Schedule.** The Project Schedule shall be a critical path method (CPM) schedule using Primavera software and/or other such software as may be required by Princeton University and providing electronic deliverables as required and subject to approval by Princeton University or as specified elsewhere in the Contract Documents. The Project Schedule shall be properly constructed following established best practices in the construction industry. The Project Schedule shall have properly developed

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and coordinated logic, shall not be unnecessarily or excessively constrained, shall be calculated using logic-override setting, and shall indicate early start potential and float for all activities. Princeton University, at its discretion, may provide the Contractor with an electronic (.XER) template schedule containing Princeton University activities, academic calendar dates, activity codes, and a work breakdown structure (WBS) ("Princeton University Activities"). A copy of the template schedule is available upon request. If a template schedule is provided, Contractor shall incorporate and take into account Princeton University Activities in the Project Schedule, showing the Princeton University Activities in appropriate graphic representations.

(c) **Schedule Milestones.** The Contractor shall, in conjunction with Princeton University, create and thereafter maintain all schedule activities, including a group of milestone activities that shall be included in and tied to the Project Schedule (the "Schedule Milestones"). Contractor shall prepare its schedule to include, at a minimum, the following Schedule Milestones: Contractual Start (defined by the Effective Date of the Contract), Substantial Completion, Certificate of Occupancy, Princeton University's "Move-In" process, Early Completion date (if one is proposed). Schedule Milestones shall also specify start date, end date, and duration for Submittals (as defined in Clause F1) and main building system elements of the Work, grouped by building area, and should include, in addition to the previous listed Schedule Milestones herein, as a minimum: Submittals, Site Mobilization, Demolition, Foundation/Excavation, Substructure, Superstructure (frame/bearing walls), Building Enclosure to water-tight condition, MEP Systems (including temporary systems, permanent power, and rough inspections), Conveying Devices, Interior Construction, Finishes, Final Inspections, Punch List, Move-In, Occupancy, and Contract Close Out.

(d) **Submittal Schedule.** Contractor shall, within ten (10) days of the Effective Date, submit a separate schedule of all Submittals (as defined in Clause F1) identifying each Submittal in accordance with Project Specification designations, and shall include anticipated and projected durations for each Submittal of: (i) Contractor's preparation; (ii) review by Princeton University and the Architect/Engineer; and (iii) reasonably anticipated revisions and resubmissions; and shall also identify the date upon which each Submittal cycle must be completed and the Submittal approved in order to ensure that ultimate approval of the Submittal has no negative impact on the critical path of the Project Schedule (the "Submittal Schedule"). Upon review and acceptance of the Submittal Schedule, Contractor shall incorporate the data from the Submittal Schedule into the Project Schedule.

(e) **Coding Requirements.** The Contractor shall utilize existing activity codes and apply new codes to all new activities added by the Contractor. The coding and organization of the Project Schedule must be in a format that is acceptable to Princeton University.

(f) **Reporting Environment.** Princeton University will host a Primavera EPPM cloud-based scheduling environment. The Contractor will be responsible for maintaining and reporting Project Schedule progress in one of the following two ways at Princeton University's choice:

- (1) **Contractor posting:** Contractor will engage directly in the Princeton University cloud-based scheduling environment to maintain and submit Updated Project Schedules for Princeton University review. The Contractor will have a range of permissions to update activity detail, progress and modify report formats.
- (2) **Princeton posting:** Contractor will submit an electronic Project Schedule file to be posted by Princeton to the cloud-based scheduling environment as Contractor's Updated Project Schedule for Princeton University review.

(g) **Report Format.** The Project Schedule shall be presented primarily in a bar-chart format, as well as additional tabular or matrix reports that may be requested.

- (1) **Bar (Gantt) Charts.** In column area show: activity ID, description, duration, early/actual start and finish dates and float. In bar chart area show: early bars from "DD-1 Month" to "FD+1 Month." Use relationship lines to show critical path. Only critical path (longest path) activities are to be shown in red.
- (2) **Columnar.** This data includes columnar data presented without Gantt bar chart.
- (3) **Types of Reports.** The Contractor shall provide at least the following reports at each monthly update interval and any other reports that Princeton University may reasonably request:
  - (i) Summary Report (Gantt). All activities, grouped by Contractor's activity codes, sorted by "Early Start."
  - (ii) Critical Path Report (Columnar). Required Substantial Completion Date must be set as a "Complete on or Before" constraint in accordance with the dates set forth in the Contract. Fields must include Activity ID, Description, Early Start, Early Finish, and Total Float. Activities should be ungrouped, and sorted by Total Float (ascending) and Early Start.



- (iii) Variance Report (Gantt and Columnar). This summary report should be graphic and columnar data comparing two or more schedule updates, often showing current month against prior month as the "Baseline." Group and sort this report similar to Summary Report, with fields to include: Activity ID, Description, Total Float, BL Early Start, Start, Start Deviation, BL Finish, Finish, and Finish Variance.
- (iv) Level of Detail. The Project Schedule shall be of sufficient detail to identify (i) a clear critical path of the overall Project Work; (ii) critical path through each of the Schedule Milestone elements; and (iii) major sub-critical paths, from the data date to the end of the Project. No activity shall have duration of more than 20 calendar days except perhaps for procurement on a case-by-case basis. The Project Schedule shall identify each entity responsible for performing each activity and task on the critical path and the major sub-critical paths, and shall clarify the relationships among the trades or subtrades.

**CLAUSE E2 UPDATED PROJECT SCHEDULES AND PROGRESS REPORTS**

(a) **Updated Project Schedule.** After approval of the proposed Project Schedule, the Contractor shall prepare on a monthly basis, or more or less frequently as Princeton University may require, an "Updated Project Schedule" that shall document the current schedule status of the Work of the Project and incorporate changes based on actual progress and new or more reliable information. Updated Project Schedule(s) shall be subject to Princeton University's written approval, shall not change the previously established Required Substantial Completion Date or any of the Schedule Milestones, and shall not be binding upon Princeton University in any manner unless or until Princeton University has approved such Updated Project Schedule, subject to any qualifications in such approval and all other terms of this Contract. Notwithstanding the preceding or any approvals by Princeton University of any Updated Project Schedules or anything in this Contract to the contrary, any change to the Required Substantial Completion Date or any of the Schedule Milestones shall only be pursuant to a Change Order signed by Princeton University. The term Project Schedule as used throughout the Contract shall include any Updated Project Schedules approved in writing by Princeton University.

(b) **Monthly Progress Reports.** In addition to the Updated Project Schedule(s), and any other reports required under Clause E1, Contractor shall provide monthly progress reports (in narrative form) that analyze and comment on issues in the Updated Project Schedule. The monthly progress report shall include all relevant Project information as may be requested by Princeton University and at a minimum, the following sections: executive summary, schedule progress last month, planned activities next month, analysis of critical path progress/slippage, general progress of the Work (earned value), variance reporting/exception analysis, action items and areas of concern, and upcoming Princeton University decisions required.

(c) **Submission Cycles.** The data date for each monthly update shall be the last working day of the month. The analysis report shall be submitted within five (5) working days. The submission shall be in paper in sufficient number of copies as required by Princeton University, in Adobe Acrobat (\*.pdf) format, and in electronic format. The Contractor shall furnish to Princeton University, for the review of Princeton University, such reports and information as may be requested by Princeton University, including without limitation, the electronic version of the data on which the reports are based, and the electronic version of the reports themselves. Each Updated Project Schedule shall be sequentially numbered and dated for identification, and Contractor shall separately maintain and archive electronically throughout the term of the Contract (e.g., no Updated Project Schedule shall "over-write" the prior version or versions of the Project Schedule or Updated Project Schedule). Contractor shall post all Primavera files and data associated with the Project Schedule and any revisions thereto to the Princeton University CPMS site.

**CLAUSE E3 PROGRESS AND COMPLETION**

(a) Time is of the essence for all provisions of and in the performance of the Contract.

(b) Contractor shall achieve each of the Schedule Milestone dates and including, without limitation, the Required Substantial Completion Date in accordance with the (Updated) Project Schedule. Contractor shall be deemed to have achieved the Required Substantial Completion Date only if the criteria set forth in Clause E10 have been met on or before the Required Substantial Completion Date.

(c) Throughout the duration of the Project, the Contractor must identify the existence of and/or reasonable opportunities for increasing the float in the Project Schedule. Critical path schedule float, if any, shall not be sequestered, consumed, or alter the timing of the Schedule Milestones without Princeton University's prior written approval. If the Contractor consumes up to one-third of any available non-critical path schedule float, the Contractor shall summarize the reasons for its use in the Contractor's monthly status report. Consumption of greater than one-third of any available non-critical path schedule float requires Princeton University's prior written approval. Notwithstanding anything in the Contract to the contrary, in no event shall the Contractor be entitled to an extension of the dates for any Schedule Milestones or the Required Substantial Completion Date or additional compensation for any delays with respect to non-critical-path activities.

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(d) The Contractor further acknowledges and agrees that additional compensation in the event of excusable delay, if any, determined in accordance with, and subject to the limitations of, Clause E5 shall not accrue for schedule delays prior to the Required Substantial Completion Date, regardless of whether or not the Contractor could have completed the Work prior to the Required Substantial Completion Date and regardless of whether or not the Contractor has submitted a schedule showing that the Work could be completed prior to the Required Substantial Completion Date, and regardless of whether or not Contractor has received an extension of the Contract Time for completion of any Schedule Milestone to be completed prior to the Required Substantial Completion Date.

(e) Contractor shall anticipate the need for, schedule and coordinate all required submissions and approvals necessary to timely progress and complete the Project, including but not limited to submissions to and approvals by Princeton University administration and/or regulatory agencies having jurisdiction.

### CLAUSE E4 ACCELERATION OF THE WORK

(a) **Recovery Plan, Acceleration at Contractor's Expense.** In addition to other rights granted to Princeton University in the Contract, if Contractor fails to achieve any Schedule Milestone dates, or if any (Updated) Project Schedule indicates that any Schedule Milestone date or the Required Substantial Completion Date will not be achieved, or Princeton University determines that the performance of the Work relative to any Schedule Milestone dates or the Required Substantial Completion Date has not progressed or reached the level of completion required by the Contract Documents, and such delays are not subject to extension of Contract Time as set forth in Clause E5, then Princeton University may require that the Contractor develop, submit within ten (10) days of demand, and execute and perform under a time Recovery Plan as defined in Clause E6 (and which shall include but not be limited to more personnel, overtime and/or double shifts) at Contractor's sole expense without any increase in the Contract Price or other compensation in order to expedite the progress of construction of the Work and assure completion of the Work in accordance with the remaining Schedule Milestone dates and the Required Substantial Completion Date to Princeton University's satisfaction. In the event that Contractor disputes any determination by Princeton University that Contractor is obligated to accelerate the Work at Contractor's expense, provided that Princeton University has issued a Disputed Change Order pursuant to the applicable Clauses of Section H hereof, Contractor shall proceed with such acceleration.

(b) **Acceleration at Princeton University's Expense.** Princeton University may request the Contractor to accelerate (including more personnel, overtime, and/or double shifts) the completion of the Work or a portion of the Work, at a time when the Contractor is not behind the Project Schedule in the performance of the Work. The Contractor agrees to accelerate the Work at Princeton University's request, and notwithstanding anything in the Contract to the contrary, the Contractor shall be reimbursed only for the Contractor's extra labor cost over the amount for regular time during the period of such acceleration, including additional fringe benefit costs, and insurance and taxes incurred by it (unless otherwise not reimbursable by some other provision of the Contract) with respect thereto and only those other actual costs of the Contractor directly related to the acceleration, which have been approved in advance by Princeton University in a written signed Change Order. Time tickets covering said overtime must be correlated to the accelerated/overtime schedule activities and submitted to Princeton University for checking and approval. No Fee, if Contractor otherwise receives a Fee on this Contract, nor additional overhead nor any profit is to be charged by or allowed to Contractor on account of acceleration or costs related thereto, nor shall Contractor be compensated for any lost efficiency or production alleged to have resulted from said overtime work, except as expressly agreed in advance by Princeton University in a written signed Change Order.

(c) Princeton University may exercise the rights furnished to it under the Clause E4 as frequently as it deems necessary or favorable.

(d) Any rights conferred on Princeton University pursuant to this Clause E4 or in any other portion of the Contract shall neither require Princeton University to exercise such rights for the benefit of the Contractor, nor shall they make Princeton University responsible in any way whatsoever for the Contractor's obligation to complete the Work of the Project by the Schedule Milestone dates or the Required Substantial Completion Date.

### CLAUSE E5 EXCUSABLE DELAYS; EXTENSION OF TIME

Contractor acknowledges that a delay in any one portion of the Project or in any Work sequence or any other aspect of the Work does not necessarily entitle Contractor to a delay in, or a delay of equal duration in, completion of the entire Project, or a delay that materially and adversely affects the Required Substantial Completion Date. Accordingly, notwithstanding anything in this Clause E5, even if conditions exist which would otherwise be an excusable delay hereunder to Contractor's performance of the Work, Contractor may only be entitled to seek an extension of the Contract Time (for any Schedule Milestones or the Required Substantial Completion Date) only to the extent that such excusable delay is proven to the satisfaction of Princeton University in its discretion to demonstrably impact the critical path of the Project Schedule. Subject to the preceding, if, without any fault on the part of Contractor, and provided Contractor complies with the conditions precedent set forth herein below and all other relevant terms and conditions of the Contract, Contractor is delayed in the performance of the Work either (i) through the fault of Princeton University or its agents or representatives; (ii) by changes in the Work and/or the Contract ordered by Princeton



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University; (iii) by suspensions ordered by Princeton University in the Work; (iv) by strikes (other than strikes precipitated by an act or omission of Contractor or any Subcontractor or by a default by Contractor or any Subcontractor under any collective bargaining agreement); (v) by embargoes; (vi) by civil commotion, warlike operation, invasion, rebellion, hostilities, upsurged power, sabotage, actions by governmental authorities or agencies, Acts of God, unusual delays to deliveries which could not be reasonably foreseen or prevented by Contractor, or any of its Subcontractors, their agents and employees, or similar unforeseeable occurrences which are beyond the reasonable control of, and without the fault of, the Contractor or any of its Subcontractors, their agents and employees (provided, however, that any delays by Contractor's Subcontractors or suppliers do not constitute an excusable cause of delay hereunder for any purpose); (vii) by fire or other unavoidable casualties; (viii) by national emergencies; (ix) by bomb threats; or (x) by unusually severe weather conditions that could not have been anticipated for Work during the time frame shown on the original Project Schedule; then, Contractor shall be entitled to an extension of the affected Schedule Milestones or the Required Substantial Completion Date for the delay to the critical path of the Work directly resulting therefrom as determined by Princeton University in its discretion subject to the following provisions and limitations and all other relevant terms and conditions of the Contract:

- (1) Time is expressly of the essence with respect to Contractor's giving of notice of any Claim or potential Claim to Princeton University for an extension of the Contract Time for any Schedule Milestones or the Required Substantial Completion Date, and the timely furnishing of such notice along with the subsequent timely furnishing of the detailed Change Order Request information identified herein are express conditions precedent to Contractor's ability to pursue any Claim or potential Claim for adjustment to the Contract Time, the Project Schedule or the Contract Price arising from any claimed delay so as to provide Princeton University an opportunity to remedy any breach or to take action to avoid or mitigate any cause regarding any delay to the performance of the Work or the Project. Within five (5) business days after Contractor knew or, reasonably should have known of any such delay, Contractor shall provide Princeton University written notice thereof in accordance with this Clause E5 and all other relevant provisions of the Contract. The initial notice hereunder must state: (1) the nature of the claimed excusable delay; the date, circumstances, and source of the claimed excusable delay; and an order of magnitude of the impact to the critical path of any Schedule Milestones or the Required Substantial Completion Date; (2) that the Contractor regards the claimed delay as an excusable delay under this Clause E5 and describe, in reasonably preliminary detail, all changes in the Contract to which the Contractor believes it is entitled; and (3) any other information required of such notice by Clause J3(c). Within ten (10) business days after giving the initial Contractor notice in compliance with the preceding sentence, the Contractor shall submit a written Change Order Request for extension of the Contract Time on account of such delay for Princeton University's review and potential approval. Contractor's Change Order Request for extension of Contract Time shall be supported by documentation and other demonstrable proof necessary for Princeton University to determine the extent of and the liability for the claimed delay, which documentation shall include, without limitation: (i) a time impact analysis (TIA) or other information in form and substance acceptable to Princeton University if reasonably ascertainable, and if not reasonably ascertainable stating the basis why it is not reasonably ascertainable, and thereafter providing such TIA or other information within an additional fifteen (15) days or some other time as agreed to by Princeton University in its discretion; (ii) suggestion of strategies to Princeton University to mitigate the effect of any such delay including without limitation overtime, re-sequencing and other remedial methods as indicated in subparagraph (5) herein below; and (iii) if reimbursement for costs in addition to additional time are requested, a written explanation of the reasons therefor, together with back-up sufficient for Princeton University to verify actual costs incurred and projected costs consistent with the information required by Clause H2(2). If Contractor fails to timely provide Princeton University with written initial notice of the delay and the subsequent Change Order Request, both with full information required herein, then the Contractor shall have waived any Claim or right to any adjustment to the Contract Time, the Project Schedule, or the Contract Price arising from the claimed delay or any ability to pursue any remedies for the subject matter of the claimed delay in the Work or events or circumstances regarding the same. In case of a continuing cause of delay of a particular nature, Contractor shall be required to file only one initial notice with respect thereto prior to the termination of the condition caused by the delay, but shall otherwise comply with all requirements herein and elsewhere in the Contract, including, without limitation, Contractor's obligation to otherwise update the Project Schedule on a regular and continuing basis as required by the Contract. Under no circumstances whatsoever shall Contractor's delivery of any Updated Project Schedule be deemed the written notice required hereunder as a condition precedent to Contractor's ability to pursue any Claim or potential Claim for adjustment to the Contract Time, the Project Schedule or the Contract Price arising from any claimed delay, whether or not such Updated Project Schedule includes any information or impact relating to any such claimed or alleged delay. Strict compliance with the requirements herein above and in conformance with Clause K1 and all other relevant terms of the Contract shall be required in all instances.

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- (2) Only the actual delay to the critical path of the Project Schedule necessarily resulting from the causes set forth above shall be grounds for a potential extension of Contract Time. Contractor must, as more fully set forth in subparagraph (1) immediately above, demonstrate the impact of the delay on the critical path of the Project Schedule by submission of documentation as required by and sufficient for Princeton University to determine Contractor's potential entitlement for a Contract Time extension. In case the Contractor is delayed at any time or for any period by two or more of the causes specified above, the Contractor shall not be entitled to a separate extension for each one of the causes but only one period of extension will be potentially granted for the delay.
- (3) If the Contractor is delayed in the performance of the Work from one or more of the causes set forth above, the extension of Contract Time to be granted to the Contractor shall be only for such portion(s) of the Work so delayed, and the Contractor shall nevertheless proceed continuously and diligently with the prosecution of the remainder of the Work.
- (4) Delays caused by Princeton University, its agents or its own contractors, even if such delays are the result of an alleged breach of this Contract or an alleged willful interference by Princeton University with Contractor's performance of the Work, shall not be grounds for an extension of the Required Substantial Completion Date or Claim for damages or an increase in the Contract Price if, and to the extent, (i) such delays are concurrent with any other causes of delay for which Princeton University is not responsible, and/or (ii) such delays would not have caused an extension to the Required Substantial Completion Date but for the occurrence of prior delays for which Princeton University is not responsible, including but not limited to Contractor's delays with respect to non-critical path activities; provided, however, that nothing in this subparagraph shall be construed to supersede or negate a prior written approval, if any, by Princeton University of Contractor's use of float pursuant to Clause E3(c) above.
- (5) Contractor shall provide a recovery plan to minimize the effects of any such delay upon the then-current approved Project Schedule acceptable to Princeton University to accelerate the completion of the Work and, if authorized by Princeton University in writing, Contractor shall perform under such and shall be compensated for such performance as provided in Clause E4(b).
- (6) Provided Contractor strictly complies with the requirements of this Clause E5 and its subsections, with respect to delays that are excusable as provided in this Clause E5 and its subsections and which are not mitigated pursuant to a recovery plan approved by Princeton University pursuant to subparagraph (5) above or otherwise as a result of Princeton University's request for acceleration pursuant to Clause E4(b), the parties agree that Contractor's compensation and damages for delay shall be computed only in accordance with Clause E7 hereof. Notwithstanding the preceding, if such excusable delay was anticipated to be mitigated in a recovery plan approved by Princeton University pursuant to subparagraph (5) above but was not so mitigated due to any fault of Contractor in either the preparation or execution/performance of such, or because of Contractor's failure to adequately comply with a request for acceleration pursuant to Clause E4(b), then Contractor shall not be entitled to either extension of Contract Time or compensation/damages of any kind relating to such delay.
- (7) Contractor further acknowledges and agrees that an extension of the Contract Time, including Required Substantial Completion Date will be permitted for a delay only if, and only to the extent that, Contractor fully complies with all requirements herein above and any other relevant terms of the Contract Documents, including but not limited to providing all substantiation in accordance with the above provisions of this Clause E5, and further that such delay: (i) is not caused, or could not have been anticipated, by Contractor, and (ii) could not be mitigated or limited or avoided by Contractor.

### **CLAUSE E6 UNEXCUSED DELAYS**

In addition to the notice required for potentially excusable delays per Clause E5, Contractor shall notify Princeton University in writing within five (5) business days of the date (time being of the essence) when the Contractor is first delayed or becomes aware of or should have become aware of potential delay in the progress of the Work due to any reason or circumstance. In the event of an unexcused delay (which is any delay not subject to extension of Contract Time as set forth in Clause E5), the Contractor shall, upon demand from Princeton University, whether in connection with Clause E4(a) or otherwise, within ten (10) days, issue an Updated Project Schedule and recovery plan which shall include a strategy, utilizing acceleration and other applicable methods, for schedule recovery to the extent possible to achieve the Schedule Milestone dates, including the Required Substantial Completion Date (the "Recovery Plan"). Upon request of Princeton University, Contractor shall submit as part of its Recovery Plan any information as may be requested, including but not limited to: (i) a "resource loaded" schedule showing Contractor's plan to deploy manpower per trade, per work area, per day, together with essential materials and equipment, and other resources necessary to timely accomplish the Work; and (ii) a two-week "look ahead" schedule identifying tasks to be

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accomplished within the coming two week period, the work areas and categories of work, and necessary manpower resources, together with other data necessary to demonstrate to Princeton University the viability of Contractor's Recovery Plan ("2 Week Plans"). In the event that Princeton University requests 2 Week Plans, Contractor shall continue to submit such plans until either (a) Contractor demonstrates that the Project Schedule has recovered from the unexcused delay, or (b) Princeton University notifies Contractor in writing that further 2 Week Plans are no longer required. All additional costs and expenses associated with Contractor's performance under any Recovery Plan shall be borne solely by Contractor without any increase in the Contract Price as provided in Clause E4(a).

### CLAUSE E7 DETERMINATION OF CONTRACTOR'S DELAY DAMAGES

(a) The Contractor and Princeton University expressly agree that Contractor's full potential increase in the Contract Price (which may only be made pursuant to a written signed Change Order) or any Claim for compensation or damage for delay which may be recoverable subject to the limitations and requirements of Clause E5 and its subsections hereof and all other relevant terms and conditions of the Contract, shall be limited to the sum of the following components:

- (1) The actual additional cost to the Contractor for materials, if any, including sales tax (unless otherwise excluded by other provisions of the Contract) and delivery, directly attributable to the delay.
- (2) The actual additional cost to the Contractor for labor (including normal fringe benefits) directly attributable to the delay.
- (3) The actual additional cost to the Contractor for construction equipment for the time that such construction equipment was actively used as a direct result of the delay at a rate not to exceed 75% of the applicable equipment rates based on the most recent edition of the National Equipment Distributors' "Compilation of Nationally Averaged Rental Rates". In addition, the Contractor shall be allowed move-in and move-out charges on heavy construction equipment.
- (4) The actual and reasonable additional General Conditions Costs incurred by Contractor that are directly attributable to the delay.
- (5) The actual and reasonable additional cost to the Contractor of (i) Work performed by Subcontractors or (ii) materials or construction equipment furnished or supplied for the Work through suppliers or materialmen which are directly attributable to the delay. Such costs shall be determined based on provisions included in every Subcontract or purchase order entered into by the Contractor that are identical to the provisions contained in this Clause E7.

(b) Contractor waives and shall have no entitlement to any profit, loss of profit or anticipated profit, cost of idle equipment, home office overhead, or consequential damages, or any other costs, expenses or damages arising out of or related to any delay which may be excusable per Clause E5 subject further to the limitations and requirements of all other relevant terms and conditions of the Contract.

### CLAUSE E8 DETERMINATION OF PRINCETON UNIVERSITY'S DELAY DAMAGES

(a) **Actual Damages for Delayed Substantial or Final Completion.** If the Contractor fails to achieve Substantial Completion of the entire Project on or before the Required Substantial Completion Date or if the Contractor fails to achieve final completion of the Project within sixty (60) days after Substantial Completion (unless the Contract Time is appropriately extended by a written Change Order), Princeton University will incur actual direct and consequential damages, including by way of example but not as a limitation: (i) additional architectural and engineering fees related to extended services; (ii) additional project management costs; (iii) financing costs; (iv) temporary storage and dislocation costs; and (v) costs related to the disruption or relocation of Princeton University personnel, academic and other departments, including equipment and machinery, affected by Princeton's inability to timely occupy the Project facility ("Actual Delay Damages"). Therefore, in the event that the Contractor fails to achieve Substantial Completion of the entire Project on or before the Required Substantial Completion Date, or if the Contractor fails to achieve final completion of the Project within sixty (60) days after Substantial Completion as provided above, the Contractor shall be liable to Princeton University for any and all Actual Damages arising out of or resulting from such delay.

(b) Any Actual Delay Damages provided for herein shall in no way limit Princeton University's entitlement to any other damages for any other injury, damage or loss for which Contractor may be responsible pursuant to the terms of the Contract or applicable law.

### CLAUSE E9 SUSPENSION OF WORK BY PRINCETON UNIVERSITY

(a) Princeton University may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the Work of this Contract for the period of time that Princeton University determines appropriate for the convenience of Princeton University.

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(b) If the performance of all or any part of the Work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of Princeton University in the administration of this Contract or (2) by Princeton University's failure to act within the time specified in this Contract (or within a reasonable time if not specified), then an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit or Fee) caused by the unreasonable suspension, delay, or interruption, and the Contract modified in writing accordingly, subject to the notice and other requirements of this Section E and other relevant provisions of the Contract. However, no adjustment shall be made under this Clause E9 for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by another cause, including the fault or negligence of the Contractor, or for which an adjustment is provided for or excluded under any other term or condition of this Contract.

### CLAUSE E10 SUBSTANTIAL COMPLETION

(a) "Substantial Completion" of the Work, or of a designated portion, means that the Work is sufficiently complete in accordance with the Contract Documents so that Princeton University may occupy, operate or use the Work, or designated portion, for the purpose for which it is intended and the following have been completed:

- (1) Certificate of Occupancy. A Certificate of Occupancy (temporary, final or other) is in place that allows legal occupancy for its intended use by Princeton University.
- (2) Initial Punch List Completed. Except for those items on the consolidated list of final incomplete or uncorrected items included with the letter of Substantial Completion ("Final Punch List"), the Initial Punch List containing comments from, but not limited to, the Architect/Engineer, the Contractor, Princeton University and other consultants approved by Princeton University has been established, posted to the Capital Project Management System, completed, and accepted as complete by Princeton University.
- (3) Operational Building Systems. Systems are fully operational except for those identified on the list of incomplete or uncorrected items included with the letter of Substantial Completion.
- (4) Commissioning. Functional testing and certification is complete. Forms and documentation which record the certification and performance of building systems, utility systems and equipment are fully executed and posted to the Princeton Collaborative System.
- (5) Training. All training required by the Contract Documents is complete unless exempted by Princeton University.
- (6) As-Built Drawings that accurately depict the installed condition of all Work must be posted to the Capital Project Management System. Without limitation, As-Built Drawings shall include any Work that deviates from approved shop drawings and other submittals, as well as drawing schedules, as-built equipment, product data, etc.
- (7) Operation and Maintenance Manuals. Operation and maintenance manuals are complete, posted to the Capital Project Management System, and printed copies have been delivered to Princeton University.
- (8) Site and Landscaping Work. Work is complete except for items included on the punch list.
- (9) Warranties. Warranties are executed, accepted by Princeton University, and posted to the Capital Project Management System.
- (10) Project Card Access & Campus Security (CACS). Work is complete, fully operational and has been electronically accepted through the Princeton University ATP commissioning. Security systems and/or exterior CACS doors labels are installed.
- (11) Cleaning. The Project is clean. The interior and exterior of building (including windows) and site are free of dirt, dust, and debris. Princeton University has accepted the Project as clean and agrees to commence housekeeping activities on a mutually agreeable date
- (12) Contractor has complied with all other requirements in the Contract Documents that are a condition of Substantial Completion or are required by Princeton University to be completed or performed by Contractor as a condition of achieving Substantial Completion.

(b) The Contractor shall notify Princeton University and, if directed, the Architect/Engineer when it considers Substantial Completion of the Work or a designated portion to have been achieved and shall prepare and submit to Princeton University, or if directed by Princeton University to the Architect/Engineer, a comprehensive list of items to be completed or corrected prior to final completion and Final Payment (the "Initial Punchlist"). Following receipt of the Initial Punchlist, Princeton University, with the assistance of the Architect/Engineer, shall conduct an inspection to determine whether the Work or designated portion can

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be occupied or utilized for its intended purpose by Princeton University without excessive interference in completing any remaining unfinished Work by the Contractor and may otherwise be in compliance with the requirements in Clause E10(a). If Princeton University determines that the Work or designated portion has not reached Substantial Completion, Princeton University, with assistance from the Architect/Engineer, shall update the Initial Punchlist or compile a further list of items to be completed or corrected so Princeton University may occupy or utilize the Work or designated portion for its intended purpose and is otherwise in compliance with the requirements in Clause E10(a). When the Work of the Initial Punchlist is complete to the satisfaction of Princeton University, such that it determines that the Work remaining to be corrected or completed by Contractor prior to final completion and Final Payment may be reasonably performed by Contractor within thirty (30) days, Princeton University will include that Final Punchlist with its letter of Substantial Completion subject to the other requirements of Clause E10(a). The Contractor shall promptly complete all items on the Initial Punchlist and Final Punchlist and shall assist Princeton University and Architect/Engineer in conducting all inspections for the completion of such. Failure to include an item on either the Initial Punchlist or Final Punchlist or any interim punchlists shall not alter the Contractor's obligation to complete all Work in accordance with the Contract Documents.

(c) When Substantial Completion of the Work or designated portion is achieved, Princeton University shall prepare a letter of Substantial Completion that shall establish the date of Substantial Completion; identify, without limitation, certain continuing responsibilities of the Contractor; the time within which the Contractor shall finish all items on the Final Punchlist accompanying the letter of Substantial Completion; and such other matters as may be required by Princeton University. Unless otherwise agreed, all items on the Final Punchlist accompanying the letter of Substantial Completion shall be completed or corrected within thirty (30) days after Substantial Completion.

(d) Warranties required by the Contract shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise agreed to by the Contractor and Princeton University.

(e) Notwithstanding anything contained in this Clause E10 or Section E to the contrary, Princeton University's issuance of a letter of Substantial Completion shall not alter the Contractor's obligation to complete all Work in accordance with the Contract Documents nor relieve Contractor of any of its obligations under the Contract. By determining that Contractor has achieved Substantial Completion, Princeton University does not waive any rights, Claims (as defined in Clause J3) and/or other claims, remedies, or defenses under the Contract in any manner whatsoever.

### **CLAUSE E11 USE AND POSSESSION PRIOR TO COMPLETION**

(a) Princeton University shall have the right to take possession of or use any completed or partially completed part of the Work. Princeton University's possession or use shall not be deemed an acceptance of any Work under the Contract.

(b) While Princeton University has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the Work resulting from Princeton University's possession or use. This does not relieve the Contractor from fulfilling its obligations under Clause E12. If prior possession or use by Princeton University delays the progress of the Work or causes additional expense to the Contractor, an equitable adjustment shall be made in the Contract Price or the time of completion, and the Contract shall be modified in writing accordingly.

### **CLAUSE E12 FINAL COMPLETION AND FINAL PAYMENT**

(a) Contractor shall achieve final completion of the Work of the entire Project for the purpose of determining the time of Final Payment (as defined in Clause I3) when: all certificates and permits necessary for permanent occupancy of the Project by Princeton University have been obtained; all Final Punchlist Work has been completed and approved by Princeton University in its discretion; all warranties, guaranties, affidavits and waivers of liens and releases have been delivered to Princeton University; all obligations set forth in Clause F2 (As-Builts) and F3 (Operating and Maintenance Manuals) have been achieved; and all other obligations of Contractor under the Contract have been fully performed as determined by Princeton University for the limited purpose of determining the time when Final Payment may be made. Notwithstanding anything to the contrary in this Clause E12 or the Contract Documents, Contractor shall be deemed to have reached final completion if it has achieved all other requirements for final completion but for the failure to secure a permanent certificate of occupancy for the Project if such failure is through no fault of the Contractor (or those for whom the Contractor is responsible) and outside the reasonable control of Contractor. By determining that Contractor has achieved final completion for the purpose of authorizing Final Payment, Princeton University does not waive any rights, Claims (as defined in Clause J3) and/or other claims, remedies, or defenses under the Contract in any manner whatsoever. The Final Payment will then be made in accordance with the payment provisions of this Contract.

(b) Other than as specifically provided in this Contract, neither any progress payment nor Final Payment to the Contractor, nor partial or full utilization or occupancy of the Work for any purpose by Princeton University, nor any other act or omission by Princeton University shall be interpreted or construed as an acceptance of any Work which is not strictly in compliance with all Contract Documents.



**SECTION F -- SUBMITTALS**

**CLAUSE F1 SHOP DRAWINGS, PRODUCT DATA, SAMPLES, CERTIFIED TEST REPORTS, AND CERTIFICATES OF COMPLIANCE**

(a) Definitions:

- (1) "Shop Drawings" are drawings, diagrams, schedules and other data specifically prepared for the Work by the Contractor or a Subcontractor at any tier, manufacturer, supplier, or distributor to illustrate some portion of the Work.
- (2) "Product Data" are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- (3) "Samples" are physical examples that illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.
- (4) A "Certified Test Report" is a document containing a list of the dimensional, chemical, metallurgical, electrical, and physical results obtained from an actual test of the materials involved, and shall certify that the materials meet the requirements of the Contract.
- (5) A "Certificate of Compliance" is a document certifying that the materials, components and equipment covered by the previously submitted Certified Test Report and Product Data have been installed in the Work and that they conform to all the requirements of the Contract.

(b) If the Contract requires Shop Drawings, Product Data, Samples, Certified Tests Report, or Certificates of Compliance, the Contractor shall coordinate and review them for accuracy, completeness, and compliance with Contract requirements and shall indicate approval thereon as evidence of such coordination and review. Shop Drawings, Product Data, Samples, Certified Tests Reports, or Certificates of Compliance submitted to Princeton University or its representatives without evidence of the Contractor's approval may be returned for resubmission. Princeton University or its representatives will indicate its approval or disapproval of the Shop Drawings, Product Data, Samples, Certified Tests Reports, or Certificates of Compliance and if not approved as submitted shall indicate the reasons therefore. Any work done prior to such approval shall be at the Contractor's risk. Approval by Princeton University or its representatives shall not relieve the Contractor from responsibility for any errors or omissions, nor from responsibility for complying with the requirements of this Contract, including all Contract Documents, except with respect to variations described and approved in accordance with paragraph (c) below.

(c) If Shop Drawings, Product Data, Samples, Certified Tests Reports, or Certificates of Compliance show variations from the Contract requirements, the Contractor shall clearly and fully describe such variations, in writing, at the time of submission. If Princeton University expressly approves any such variation(s) in writing, an appropriate Contract Modification will be issued by Princeton University, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.

**CLAUSE F2 AS-BUILT DRAWINGS**

(a) During the construction phase, the Architect/Engineer may, when authorized by Princeton University, revise the issued-for-construction Drawings and issue revised Drawings to the Contractor. For plans, and other drawings wherever possible, these revisions will be made to the electronic files with paper copies issued to the Contractor. When field conditions that were not accommodated for during construction coordination cause the Contractor's installation to deviate from the Drawings or the approved Shop Drawings, the Contractor is responsible to edit and maintain as-built drawings based on, and in the same native format as, the approved Shop Drawing files (i.e., .dwg, .RVT). The Contractor as-built drawings shall be maintained regularly, weekly at a minimum, to reflect the precise routing of installed Work. Failure by the Contractor to comply with the foregoing shall constitute cause for denial of applicable progress payment.

(b) The Contractor shall maintain throughout construction, on-site and/or via CPMS, accurately updated as-built drawings. The Contractor will submit, as a prerequisite for obtaining Substantial Completion, the final as-built drawing files in electronic and paper copy. The Architect/Engineer will review these documents for accuracy prior to submission to Princeton University.

(c) Failure on the part of the Contractor or a Subcontractor at any tier to fulfill its obligations under paragraph (b) above shall be just cause for Princeton University to withhold final payment from the Contractor until compliance with the complete requirements of this section is demonstrated to the satisfaction of Princeton University.

**CLAUSE F3 OPERATING AND MAINTENANCE MANUALS**

(a) The Contractor shall maintain and furnish accurate copies of manufacturers' catalogues, maintenance and operating instructions, product data, and maintenance information for all equipment and machinery provided under this Contract. This



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information shall be posted to the CPMS and one (1) to three (3) hard copies will be required during turnover, the exact number of which is subject to Princeton University's discretion. The information will be organized by system, indexed by section tabs, and numerically indexed in the front of each binder. Sufficient information shall be furnished in order to describe completely the design basis and operation and maintenance procedures for each complete system including all operating parts. Small-scale base floor plans for each trade indicating locations of major equipment for each discipline shall be included. Each document shall be marked with the Project name as appears in the specifications.

(b) One completed sample binder, assembled and containing all information shall be submitted to the Architect/Engineer for review and approval prior to preparation and submission to Princeton University of the remainder of the manuals.

### CLAUSE F4 WARRANTIES AND GUARANTEES

(a) **One-Year Warranty.** In addition to the warranties and guarantees set forth elsewhere in this Contract, the Contractor upon request of Princeton University shall promptly correct all failures or defects in its scope of the Work for a period of one (1) year after the actual date of Substantial Completion, or the date of acceptance of Princeton University, whichever is later. Warranties and guarantees for equipment accepted prior to the date of Substantial Completion shall be in effect for one (1) year after the date of Substantial Completion. Should the Contractor fail to promptly correct any failure or defect, Princeton University may take whatever actions it deems necessary to remedy the failure or defect and the Contractor shall promptly reimburse Princeton University for any expenses or damages it incurs as a result of the Contractor's failure to correct the failure or defect.

(b) The warranties and guarantees set forth in this Clause F4 shall be in addition to all other warranties, express, implied, or statutory. Nothing in this Clause F4 shall be construed to establish a period of limitations with respect to Princeton University's right to bring a Claim (as defined in Clause J3) and/or other claims for defective work under applicable law. In addition, the warranty obligations set forth in this Clause F4 shall survive termination of the Contract, and shall not limit, but shall be in addition to Princeton University's other remedies for defective work.

(c) The Contractor will collect all warranties and submit same to the Architect/Engineer for review and approval. The Contractor shall endeavor to obtain warranties from Subcontractors and suppliers that run directly for the benefit of Princeton University.

(d) **Warranty Inspection.** The Contractor shall provide services in conjunction with an inspection, approximately 10 months from date of Substantial Completion. Visual inspection shall be made with Princeton University and the Architect/Engineer to determine whether correction of Work is required in accordance with provisions of the Contract Documents.

### CLAUSE F5 CONSTRUCTION AND WASTE MANAGEMENT PLAN

Princeton University's goal for the recycling of all eligible materials (post-abatement) is 95%. Accordingly, the Contractor shall submit a Construction & Demolition Waste Management Plan for approval by Princeton University at the beginning of the submittal and review period (or earlier when applicable). This plan shall include, but is not limited to, the following:

- (1) Analysis of the proposed Work site waste to be generated, including the types of recyclable and waste materials generated (by volume or weight);
- (2) A list of each material proposed to be salvaged, reused, or recycled during the Project;
- (3) A list of proposed recycling facilities to be used in the project;
- (4) An outline of proposed project waste management meetings (at a minimum, waste management goals and issues shall be discussed at the pre-construction meeting and regular jobsite meetings);
- (5) Materials handling procedures for removal, separation, storage, and transportation;
- (6) A communication plan for informing Subcontractors and crews about the Waste Management Plan, establishing job-site instruction, notification and signage procedures for waste management and providing a methodology for documenting and reporting quantities and types of materials reused, salvaged, recycled, and disposed; and,
- (7) Proof of distribution times, weights, etc. from trucks removing debris from the project site.

### CLAUSE F6 ATTIC STOCK AND SPARE PARTS

When building attic stock and/or spare parts requirements are specified in the Contract Documents, the Contractor shall (1) comply with such requirements and (2) ensure that Subcontractors comply with such requirements.

SECTION G -- INSURANCE AND INDEMNITY

CLAUSE G1 INSURANCE

(a) Insurance requirements and coverage to be provided at Contractor's expense:

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

**Workers Compensation (WC)**..... Statutory Minimum\*  
**Employer's Liability (EL)** ..... \$500,000 Minimum\*

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

**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 ..... Minimum coverage limits as specified in the Agreement  
Aggregate ..... Minimum coverage limits as specified in the Agreement

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

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

**Excess Liability (EL):** If the dollar value of this Contract exceeds \$500,000, the Contractor will maintain, deliver, and keep in force, at the Contractor's expense, the following excess liability insurance coverage during the performance under the Contract

General Aggregate ..... Minimum coverage limits as specified in the Agreement

**Pollution Liability (PL):** If Princeton University deems it appropriate, the Contractor will maintain, deliver, and keep in force, at the Contractor's expense, the following pollution liability insurance coverage during the performance under the Contract

General Aggregate ..... Minimum coverage limits as specified in the Agreement

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

(2) All certificates and policies required in this Clause G1 shall evidence insurance written by a carrier authorized to do business in New Jersey and rated at least "A" in Best's Key Rating Guide. In addition to insurance certificates, upon request, the Contractor shall promptly provide to Princeton University a certified, full and correct copy of all insurance policies providing the coverage required by this Contract (including, without limitation, insurance coverage required of Subcontractors).

(3) The Contractor agrees to comply with the following additional policy requirements –

(i) "The Trustees of Princeton University, its officers, employees and agents" shall be named as an additional insured in the General Liability and Excess Liability policies specified in paragraph (a), with respect to any liability resulting from or in any way connected with any activity provided for under this Contract, and said insurance coverage shall be primary as to any other valid and collectible insurance.

(ii) The Contractor will require all insurance policies that it secures or maintains and that are in any way related to the Work to include clauses stating each insurance carrier will waive all rights of recovery, under subrogation or otherwise, against The Trustees of Princeton University, its officers, employees and agents.

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- (iii) To the extent that it is commercially available, and at no additional cost, the Contractor will provide a general aggregate per project endorsement to the general liability and excess liability policies.
- (4) The certificate for Contractor's General Liability insurance shall certify that any policy restrictions or exclusions in the property damage section, except for (i) exclusions included in the standard 1986 ISO policy form and (ii) standard industry accepted pollution and asbestos have been deleted from the policy, and that no similar restrictive clauses or exclusions curtailing coverage (as appropriate for the protection of Princeton University's interests in the Project) have been included. Any change in coverage described in this subparagraph shall be deemed material, and Contractor shall abide by the notice provision of subparagraph (a)(6) in connection with such change.
- (5) Certificates evidencing compliance with all requirements of the insurance coverage as indicated above and that include statements thereon that the "*Trustees of Princeton University, its officers, employees, and agents are additional insureds*" and "*Said insurance coverage shall be primary as to any other valid and collectible insurance*" shall be filed with Princeton University's Administrative Representative before the Contractor's Work begins and upon renewal or replacement of the insurance policies until Contractor's Work is completed. To the extent commercially available to the Contractor from its current insurance carrier, insurance policies required under this Clause G1 shall contain a provision that the insurance carrier or its designee must give Princeton University written notice transmitted in paper or electronic format (i) 30 days before coverage is non-renewed by the insurance carrier and (ii) within 10 business days after cancellation of coverage by the insurance carrier. In addition, if any insurance policy required under this Clause G1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, the Contractor shall give Princeton University prompt written notice upon actual or constructive knowledge of such condition.
- (6) The Contractor shall not enter upon or continue the performance of the Work unless the Contractor is and remains insured in accordance with the above requirements unless waived by mutual agreement by Princeton University and Contractor. In accordance with the provisions of Clause G2 hereof, the Contractor shall indemnify Princeton University for any loss suffered by Princeton University for failure of the Contractor to be so insured.
- (7) Contractor shall not permit any Subcontractor to enter upon or continue the performance of the Work unless such Subcontractor is and remains insured in accordance with the minimum limits of coverage set forth in this subparagraph (a)(7) and otherwise in conformance with the other terms and conditions of this Clause G1 and submits a certificate of insurance in accordance with subparagraph (a)(5) above to the Contractor unless modified by written agreement by Princeton University. Contractor shall ensure that Subcontractors' additional insured endorsement expressly names each additional insured (non-blanket) and does not include language that requires an additional insured to have a written contract with the named insured for coverage to apply. In accordance with the provisions of Clause G2 hereof, Contractor shall indemnify Princeton University for any loss suffered by Princeton University for the failure of any such Subcontractor to be so insured. Subcontractor's minimum limits of coverage shall be as follows based on the value of the Subcontract:

Subcontract Value	Primary General Liability (per occurrence/aggregate)	Excess	Pollution
< \$10 Million	\$2 Million/\$2 Million	\$5 Million	\$2 Million
≥ \$10 Million but < \$50 Million	\$2 Million/\$2 Million	\$10 Million	\$2 Million
≥ \$50 Million but < \$100 Million	\$2 Million/\$2 Million	\$25 Million	\$2 Million
≥ \$100 Million	\$2 Million/\$2 Million	\$50 Million	\$2 Million

- (8) Losses or expenses not compensated by the foregoing insurance, which are due to the negligence or fault of the Contractor, or its Subcontractors, agents or employees shall be payable solely by the Contractor.
- (9) Princeton University shall not be liable to Contractor or its agents, employees or assigns for any loss or damage covered by the insurance policies described above.
- (10) If Princeton University requires insurance coverage or limits in excess of those shown above, the Contractor will arrange for such additional insurance to the extent that it is reasonably available on normal commercial terms.

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- (11) The Contractor shall pay all deductible amounts and shall indemnify Princeton University, in accordance with the provisions of Clause G2 hereof, against any Claims (as defined in Clause J3) and/or other claims for payment of any policy deductible made in the event of any occurrence giving rise to a claim on any insurance policy in connection with this Project or the Work, except where such occurrence is or was caused by the sole negligence of Princeton University, in which case Princeton University shall be responsible for the deductible amount.

**(b) Builders Risk Coverage.**

- (1) **Builders Risk Coverage to be Provided by Princeton University.** Unless otherwise indicated in the Agreement, Princeton University shall provide and maintain Builders Risk insurance coverage or similar property insurance coverage for the Project in accordance with the following:
- (i) Princeton University will maintain and keep in full force and effect at Princeton University's expense, property insurance for the full replacement cost of the Project insuring the Work against all risks of physical loss or damage to property of every kind and description to be used in the fabrication, assembly, installation, erection or alteration of the Work, except those risks specifically excluded by the policy. The policy shall cover the interests of Princeton University, the Contractor, and all Subcontractors, as their respective interests may appear on the building, structure, materials and equipment entering into or used in the performance of the Work, while in transit, stored on-site, or stored off-site to the full insurable value thereof. This insurance shall include "all risk" insurance for physical loss or damage, including the perils of windstorm, fire, lightning, explosion, collapse, flood, earthquake, theft, vandalism and malicious mischief and all applicable soft costs. The deductible shall not be greater than \$10,000.
  - (ii) The Contractor shall pay all deductible amounts and shall indemnify Princeton University, in accordance with the provisions of Clause G2 hereof, against any claims for payment of any policy deductible made in the event of any occurrence giving rise to a claim on any insurance policy in connection with this Project or the Work, except where such occurrence is or was caused by the sole negligence of Princeton University, in which case Princeton University shall be responsible for the deductible amount.
  - (iii) Tools, supplies, materials, and equipment owned and used by the Contractor or Subcontractors that are not intended to be a permanent part of the building are specifically excluded. The Contractor will maintain and keep in force, and not as a Cost of Work, insurance covering the interest of the Contractor and Subcontractor for tools, supplies, materials, and equipment not intended as permanent structures of the Project.
  - (iv) Princeton University will provide evidence of such insurance before the commencement of Work if requested by the Contractor in writing, and by entering into the Contract, Contractor represents that it has had an opportunity to review Princeton University's Builders Risk insurance or similar property insurance policy applicable to this Project (as may be redacted by Princeton University in its discretion) and accepts same notwithstanding anything in the Contract to the contrary. Princeton University will endeavor to give 30 days prior written notice to the Contractor if the policy is cancelled or allowed to expire or if there are any material changes in the policy related to the Project.
  - (v) This insurance shall cover the interests of Princeton University as the Named Insured and loss payee and the interests of the Contractor and Subcontractors as Named Insured.
  - (vi) Princeton University as fiduciary shall have the power to adjust and settle a loss with Princeton University's insurers. A loss insured under Princeton University's Builders Risk insurance or similar property insurance applicable to this Project shall be adjusted by Princeton University as fiduciary and made payable to Princeton University as fiduciary for the insureds.
  - (vii) **Waivers of Subrogation.** Princeton University, Contractor and Subcontractors (including material suppliers) waive subrogation against each other for damages to the extent covered by the Builders Risk insurance coverage or similar property insurance coverage obtained pursuant to this subparagraph (b)(1). The Builders Risk insurance coverage or similar property insurance coverage shall be endorsed to provide for the waiver of subrogation, provided that vendors or suppliers of equipment will not be provided a waiver of subrogation for faulty design or materials.

- (viii) Contractor and Princeton University shall cooperate in good faith to meet all terms and conditions of the Builders Risk or similar property insurance policy, including claims reporting, claims adjustment with the insurer, and other provisions of the policy.
- (2) **Builders Risk Coverage to be provided by the Contractor.** If the Agreement indicates that the Contractor is responsible for providing Builders Risk insurance coverage for the Project, this subparagraph shall supersede subparagraph (b)(1) above and the Contractor shall then –
- (i) Purchase, maintain and keep in force, Builders Risk property insurance for the full replacement costs of the Project insuring the Work against all risks of physical loss or damage to property of every kind and description to be used in the fabrication, assembly, installation, erection or alteration of the Work, except those risks specifically excluded by the policy but only to the extent that such policy exceptions have been reviewed and approved by Princeton University in writing. The policy shall cover the interests of Princeton University, the Contractor, and Subcontractors, as their respective interests may appear on the building, structures, materials and equipment entering into or used in the performance of the Work, while in transit, stored on-site, or stored off-site, start-up and testing, and debris removal, to the full insurable value thereof. This insurance shall include “all risk” insurance for physical loss or damage including the perils of windstorm, fire, lightning, explosion, collapse, flood, earthquake, mechanical breakdown (including testing and start-up where applicable), theft, vandalism, and malicious mischief. All applicable soft costs shall be included. Coverage shall not exclude resulting loss or damage due to faulty workmanship, materials or design, except for related costs for rectification or repair of such faulty workmanship, materials or design. Coverage shall be written on a completed value basis in an amount not less than 100% of the replacement value of the property under construction, including the equipment under various purchase orders, and property of any kind purchased by Contractor on behalf of Princeton University plus other values Princeton University requires to be insured. The coverage shall be in force until the final certificate of occupancy or acceptance by Princeton University, and Contractor shall deliver certified, full and correct copies of such policy of insurance showing that such policy is in effect upon demand from Princeton University and shall provide Princeton University with at least thirty (30) days prior written notice if the policy is cancelled or allowed to expire or if there are any material changes in the policy related to the Project.
- (ii) The Contractor shall be responsible for all insurable losses within the policy's deductible and shall indemnify Princeton University, in accordance with the provisions of Clause G2 hereof, against any claims for payment of any policy deductible made in the event of any occurrence giving rise to a claim on any insurance policy in connection with this Project or the Work, except where such occurrence is or was caused by the sole negligence of Princeton University, in which case Princeton University shall be responsible for the deductible amount.
- (iii) Evidence of this coverage shall detail any “non-standard exclusions” as well as the deductible per loss, and shall be filed with Princeton University's Facilities Procurement Office prior to execution of the Contract.
- (iv) This insurance shall cover the interests of Princeton University, Contractor, and Subcontractors (and others as may be instructed by Princeton University) as the Named Insured.
- (v) Contractor as fiduciary shall have the power to adjust and settle a loss with Contractor's insurers. A loss insured under Contractor's Builders Risk insurance applicable to this Project shall be adjusted by Contractor as fiduciary and made payable to Contractor as fiduciary for the insureds.
- (vi) **Waivers of Subrogation.** Princeton University, Contractor and Subcontractors (including material suppliers) waive subrogation against each other for damages to the extent covered by the Builders Risk insurance coverage obtained pursuant to this subparagraph (b)(2). The Builders Risk insurance coverage shall be endorsed to provide for the waiver of subrogation, provided that vendors or suppliers of equipment will not be provided a waiver of subrogation for faulty design or materials.
- (vii) Contractor and Princeton University shall cooperate in good faith to meet all terms and conditions of the Builders Risk policy, including claims reporting, claims adjustment with the insurer, and other provisions of the policy.

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### CLAUSE G2 INDEMNIFICATION AND DEFENSE

(a) **Indemnification and Defense.** To the fullest extent permitted by law, Contractor shall hold harmless, indemnify and defend (with counsel satisfactory to the parties indemnified) Princeton University, its trustees, officers, employees and agents (collectively the "Covered Parties") from and against all Claims (as defined in Clause J3), claims, suits, actions, liabilities, damages, losses, costs and expenses arising out of (i) the performance or nonperformance of the Work by the Contractor, any Subcontractor, or anyone for whose acts Contractor or any Subcontractor are liable, or (ii) the Contractor's performance or nonperformance of its obligations under the Contract, including but not limited to Claims (as defined in Clause J3) and/or other claims, damages, losses or expenses that (a) are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, and (b) regardless of whether such Claims (as defined in Clause J3) and/or other claims are caused in part by the negligence or other fault of the Covered Parties; provided, however, that this indemnification shall not apply if such Claims (as defined in Clause J3) and/or other claims arise from or are caused by the sole negligence of the Covered Parties. The terms "damages," "losses" and "expenses" shall include all costs and expenses of whatever nature or type, including judgments, arbitration awards, settlements, court costs, litigation expenses, and 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) in connection therewith. The parties acknowledge and agree that the foregoing indemnification obligation shall not be limited by applicable workers compensation laws. Limits of liability provided in any applicable insurance coverage provided by the Contractor pursuant to the Contract, or otherwise, shall not diminish or limit the Contractor's indemnification obligations.

(b) **Employee Claims.** Without limiting in any way the breadth of this Clause G2, Contractor specifically acknowledges its obligation to indemnify and defend the Covered Parties from and against any claim that may be asserted by or on behalf of any employee of Contractor, Subcontractors and suppliers alleging bodily injury, sickness, disease or death, or injury to or destruction of tangible property sustained by said employee in connection with the Work, unless caused by the sole negligence of the Covered Parties.

(c) **Survival.** All of Contractor's indemnity and defense obligations under this Contract, including but not limited to its obligations under this Clause G2, shall survive the term or completion or termination of this Contract.

### CLAUSE G3 BONDS

Performance and Payment Bonds are not required under this Contract. Unless otherwise approved in advance by Princeton University, the Contractor shall not obtain bonds, nor shall the Contractor cause a Subcontractor at any tier to obtain bonds.

## SECTION H -- CHANGES IN THE WORK AND/OR THE CONTRACT

### CLAUSE H1 CHANGE ORDERS

A "Change Order" is a written instrument approved and produced by Princeton University and that is identified therein as being a final and binding Change Order signed by both Princeton University's authorized Project Manager (or other appropriately authorized and designated representative) and the Contractor stating their full agreement with respect to any change in the Work and/or the Contract. It is expressly agreed that the term Change Order as used in the Contract 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 Change Order signed by Contractor indicates its agreement therewith, including the adjustment of the Contract Time, or the Project Schedule, or the Contract Price, if any, as the final and full resolution for Contractor and all of its Subcontractors of the underlying change in the Work and/or the Contract and all events, occurrences and circumstances relating thereto. See also Clause H4(b) below. Except as provided in this Section H, no order, statement, or conduct of Princeton University other than an appropriately signed Change Order shall be treated as a change in the Work and/or to the Contract or entitle the Contractor to an equitable adjustment of the Contract Time, the Project Schedule, or the Contract Price.

### CLAUSE H2 PRINCETON UNIVERSITY INITIATED CHANGES

Princeton University's authorized Project Manager or other designated representative may, at any time, without notice to the sureties or waiving any rights under any surety bonds, if any, by a written request for proposal designated or indicated to potentially become a Change Order, make or direct changes in the Work and/or the Contract within the general scope of the Contract, including changes by addition, deletion or revision (i) in the Specifications or Drawings or designs; (ii) in the method or manner of performance of the Work; (iii) in the Princeton University-furnished facilities, equipment, materials, services, or site; or (iv) by directing acceleration in the performance of the Work for Princeton University's convenience (in connection with and additionally subject to Clause E4(b)) ("Princeton Request for Proposal").



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- (1) With each Princeton Request for Proposal, Princeton University shall direct the Contractor to either (1) proceed to perform the changed Work, with an estimate to follow; or (2) submit an estimate for the changed Work but not proceed to perform the changed Work without additional written authorization.
- (2) Within ten (10) business days after receiving a Princeton University Request for Proposal, the Contractor shall provide Princeton University with a written Change Order Request stating all proposed changes in the Contract, including, without limitation, any changes to the Contract Time, the Project Schedule, and/or the Contract Price, to which it believes it is entitled as a result of the Princeton Request for Proposal. The Change Order Request submitted by Contractor for changes in the Work and/or the Contract must be completely itemized and show, among other things, the affected Drawings, quantities of material involved, and the dollar amounts for labor, materials, equipment rental, salaried personnel costs, insurance, and taxes (if not excluded by the Contract), as well as changes in the then-current Project Schedule and in the Contract Time in format and detail satisfactory to Princeton University. Princeton University may request, and the Contractor shall promptly provide, further cost breakdowns, clarifications, documentation, or back-up if Princeton University believes such additional information is needed to understand and evaluate the Change Order Request. If the claimed change involves a Claim for extension of the Contract Time, it is a further express condition precedent of any such Claim or request for adjustment that the Contractor has complied with Clause E5.

### CLAUSE H3 CONTRACTOR INITIATED CHANGES

Any other written or oral order (which, as used in this Clause H3, includes, without limitation, direction, instruction, interpretation, or determination and further including any direction for acceleration in the performance of the Work for Contractor's fault in connection with Clause E4(a)) from Princeton University that causes or Contractor alleges to cause a change in the Work and/or the Contract, may potentially result in a Change Order under this Section H or otherwise be pursued as a Claim by Contractor (pursuant and subject to the relevant terms of this Contract); provided, that the Contractor delivers to Princeton University a timely written notice (as defined herein) in full compliance with all conditions precedents set forth in this Clause H3.

- (1) Except with respect to written Princeton Requests for Proposals pursuant to the provisions of Clause H2 above, notwithstanding any other terms in the Contract to the contrary, it is an express condition precedent to Contractor's ability to make any Claim or request for adjustment to the Contract Time, the Project Schedule or the Contract Price arising from any claimed change in the Work and/or the Contract or otherwise that the Contractor must deliver to Princeton University a written notice within five (5) business days of the earlier occurring date on which the Contractor knew, or reasonably should have known, of the occurrence of the events or conditions giving rise to such claimed change in the Work and/or the Contract in full compliance with the requirements of the following sentence. The notice hereunder must state: (1) the nature of the claimed change; the date, circumstances, and source of the claimed change; and an order of magnitude of the price of the claimed change; (2) that the Contractor regards the claimed change as a change in the Work and/or the Contract and describe, in reasonably preliminary detail, all changes in the Contract to which the Contractor believes it is entitled; and any other information required of such notice by Clause J3(c). So that Princeton University can properly investigate any Contractor Claim for a change in the Work and/or the Contract, TIME IS OF THE ESSENCE WITH RESPECT TO CONTRACTOR GIVING NOTICE OF CHANGE TO PRINCETON UNIVERSITY, and, if the Contractor's notice required hereunder is not delivered within the required time or with the full information required by this provision, the Contractor shall have waived any Claim or right to any adjustment to the Contract Time, the Project Schedule, or the Contract Price arising from the claimed change in the Work and/or the Contract or any ability to pursue any remedies for the subject matter of the claimed change in the Work and/or the Contract or events or circumstances regarding the same. If the claimed change involves a Claim for extension of the Contract Time, it is a further express condition precedent of any such Claim or request for adjustment that the Contractor has complied with Clause E5. If the claimed change involves a differing site condition, it is a further express condition precedent of any such Claim or request for adjustment that the Contractor has complied with Clause B12.
- (2) Within ten (10) business days after giving the initial Contractor notice in compliance with the requirements of Clause H3(1), the Contractor shall submit a written Change Order Request that shall include all of the same information as described in Clause H2(2). If the claimed change involves a Claim for extension of the Contract Time, it is a further express condition precedent that the written Change Order Request complies with Clause E5.

### CLAUSE H4 PRINCETON UNIVERSITY RESPONSE TO CHANGE ORDER REQUESTS

- (a) In response to receipt of a proper Change Order Request pursuant and subject to Clause H2(2) or H3(2), Princeton University shall review the submission and subsequently either (1) issue a proposed change order (to be signed by both Princeton

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University and Contractor) based upon the adjustments to the Contract Time or Project Schedule, or the Contract Price and other information submitted by or finally negotiated with Contractor; or, (2) object to the submitted Contract Price or Contract Time or Project Schedule adjustments or other information. If Princeton University objects to Contractor's proposed adjustments to the Contract or other information, Princeton University may issue a Disputed Change Order defined in and pursuant to Clause H5 or authorize Contractor to perform the change on a time and material basis pursuant to Clause H6 as a T&M Change Order. In no instance shall Princeton University's failure to respond to any Change Order Request be deemed any kind of acceptance or approval of same.

(b) Princeton University and Contractor acknowledge and agree that any Change Order Request submitted by Contractor and any resulting Change Order shall include provision for full resolution of all Claims or right to Claim that the Contractor and/or its Subcontractors may have or thereafter have relating to the change in the Work and/or the Contract for any and all costs (including overhead and profit) and/or damages of Contractor and/or its Subcontractors arising out of or relating to the change in the Work and/or the Contract, both with respect to changed Work and/or unchanged Work, of every kind and character, whether direct, indirect, impact, and/or consequential in nature, known or unknown, and any and all Claims (as defined in Clause J3) and/or other claims or rights to make same which Contractor or its Subcontractors may have or thereafter have relating to the change in the Work and/or the Contract, including without limitation delay, acceleration, inefficiency and/or impact or cumulative impact Claims/claims.

### **CLAUSE H5 DISPUTED CHANGES**

If Contractor disputes a decision by Princeton University as to whether a change in the Work and/or the Contract has occurred (Disputed Work as defined in Clause J5(b)) or whether, or to what extent, a change in the Work and/or the Contract will result in a change in the Contract Price, the Contract Time, or the Project Schedule (Disputed Changed Work as defined in Clause J5(c)), then, if Princeton University directs Contractor in a written directive (whether or not such written directive is designated or indicated to be a Disputed Change Order) to nevertheless perform such Disputed Work or Disputed Changed Work pursuant to this Clause H5 and Clause J5 ("Disputed Change Order"), then Contractor shall perform such Disputed Work or Disputed Changed Work as directed in the Disputed Change Order and as part of the Work of this Contract; provided, however, that it is expressly agreed that a Disputed Change Order is not a Change Order, and Princeton University shall not be prejudiced in any manner by issuing a Disputed Change Order, and Contractor shall not be entitled to payment with regard to any Disputed Change Order, except that the performance of the Work of a Disputed Change Order shall not prejudice any potential Claim that Contractor may have with respect to such Work of the Disputed Change Order, so long as Contractor has fully complied with all conditions precedent required to pursue Claims for such, including without limitation giving Princeton University timely notice of such Claim pursuant to Clause H3(1) and Clause J3, and so long as Contractor maintains the records required under Clause H6(c) below.

### **CLAUSE H6 TIME AND MATERIAL CHANGES**

(a) In the event of any Disputed Changed Work, if the parties are unable to agree on a lump sum amount for any increase in the Contract Price resulting from such Disputed Changed Work, and in addition to Princeton University's right to require Contractor to perform such Disputed Changed Work pursuant to a Disputed Change Order as provided in Clause H5, the amount of such increase may, at the sole discretion of Princeton University in writing, be determined on a time and material basis as the sum of (a) Contractor's aggregate additional reasonable, provable, and necessary costs resulting from such change in the Work and/or the Contract (whether incurred directly by Contractor or indirectly through one or more Subcontractors) for: (i) labor and labor burdens for time actually spent at Work on the Site, (ii) materials and equipment incorporated in the Work, (iii) rental of equipment, machinery or temporary facilities, and (iv) salaried personnel working directly on the Work, plus (b) a reasonable allowance for Contractor's overhead and profit relating to such costs ("T&M Change Order").

(b) In connection with any T&M Change Order, Contractor shall submit to Princeton University a proposed not to exceed value for the full performance of all Work associated with the T&M Change Order and unless otherwise directed in writing by Princeton University, Contractor shall not proceed with such Work unless or until Princeton University consents in writing to such not to exceed value. Contractor shall, on a regular basis, in connection with its monthly Applications for payment and as otherwise requested by Princeton University, report the progress of completion of the Work of any T&M Change Order in the context of its not to exceed value. Contractor shall be responsible to perform such Work in compliance with all prior representations made to Princeton University, and to the extent that such Work exceeds the not to exceed value of the T&M Change Order, Contractor shall be required to complete the Work of such T&M Change Order at its own cost with no reimbursement from Princeton University.

(c) Contractor shall keep, with respect to changes in the Work and/or the Contract performed on a time and material basis pursuant to a T&M Change Order, a complete and accurate account of all quantities of labor, materials, machinery, equipment, and salaried personnel costs relating thereto, itemized in such form and supported by such evidence as Princeton University may reasonably request. In addition, Contractor shall provide Princeton University with access to such records as Princeton University may reasonably request to allow the University to determine the amount of any savings applicable to any changes in the Work and/or the Contract.

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### CLAUSE H7 MARK-UPS ON CHANGE ORDERS AND OTHER ADJUSTMENTS (DECREASES)

- (a) There shall be no mark-up on Change Orders whatsoever, except as provided herein or as otherwise expressly specified in the Agreement (Part I) portion of the Contract. Without limitation to the preceding, it is expressly understood that if this is a GMP Contract or a Cost Plus Fixed Fee Contract, Contractor will receive no mark-up for Fee (or any overhead or profit) based on the adjusted Costs of the Work resulting from any Change Orders other than as set forth in the Agreement (Part I) portion of the Contract.
- (b) The Contract Price shall be otherwise increased or decreased resulting from changes to the Work pursuant to approved Change Orders signed by Princeton University as provided for in this Section H and expressly specified in the Agreement (Part I) portion of the Contract.
- (c) **Limitation on Subcontractor Markup.** Contractor shall include in each Subcontract a limitation on the markup that Subcontractors can include in Change Orders. The cumulative total of markup (Subcontractor markup plus all lower-tier Subcontractor markups) shall not exceed fifteen percent (15%) of the cost of the change.

## SECTION I -- PAYMENTS

### CLAUSE I1 APPLICATIONS FOR PAYMENT AND SCHEDULE OF VALUES

- (a) Princeton University shall pay the Contractor the Contract Price as provided in this Contract. The form of application for payment (the "Application for Payment") shall be as specified by Princeton University in its discretion.
- (b) Schedule of Values. Before the first Application for Payment, the Contractor shall submit to Princeton University for its review and approval a schedule of values allocating the entire Contract Price to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as Princeton University may require. This schedule once approved by the Owner in writing shall be used as a basis for reviewing the Contractor's Application for Payment.
- (1) For GMP Contracts, the schedule of values shall be based on the GMP Price Breakdown and other detailed information requested by Princeton University.
  - (2) For CPFF Contracts, the schedule of values shall be based on the Target Price and other detailed information requested by Princeton University.
  - (3) For Fixed Price Contracts, the Contractor shall furnish a breakdown of the total Contract Price showing the amount included therein for each principal category of the Work, in such detail as requested to provide the basis for determining progress payments.
  - (4) For Time-and-Material Contracts, the Contractor shall not be required to provide a schedule of values unless requested by Princeton University; such schedule shall be in a format as agreed by the Parties.
- (c) The period covered by each Application for Payment shall be one calendar month ending on the last day of the month based on the schedule of values approved by Princeton University and otherwise as provided herein and elsewhere in the Contract Documents. Notwithstanding the preceding, in certain limited circumstances Princeton University may make progress payments at more frequent intervals as determined by Princeton University in its sole discretion.
- (d) For GMP Contracts, Cost Plus Fixed Fee Contracts, and Fixed Price Contracts Only. On or before the twentieth (20th) day of each month during the performance of the Work, Contractor shall submit to Princeton University for its review an Application for Payment for Work performed and materials installed during that month (estimated through the end of that month), together with the reports or revised schedules and all supporting data and information and documents specified herein this Section I and elsewhere in the Contract Documents. Changes in the Work and/or the Contract will only be paid as per a written Change Order signed by Princeton University.
- (1) Monthly progress payments shall be based on estimates of Work performed that meet the standards of quality established under the Contract, as approved by Princeton University or its representatives in their reasonable discretion, and the schedule of values as approved by Princeton University.
  - (2) Additionally, for GMP Contracts and Cost Plus Fixed Fee Contracts only, Contractor shall submit payrolls (e.g., time sheets) for all labor and other data supporting the Contractor's right to payment for Subcontracts or materials in accordance with Generally Accepted Accounting Procedures (GAAP), and any other reasonable evidence required by Princeton University to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor, less that portion of those payments attributable to the Contractor's Fee. The Application for Payment shall comprise both (1) the Cost of the Work incurred during the preceding month for which the

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Contractor is to be paid, and (2) the amount of the Contractor's Fee due based on the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work that has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price (if GMP Contract) or Target Price (if CPFF Contract) allocated to that portion of the Work in the schedule of values.

(e) For Time and Material Contracts Only.

(1) Hourly Rate.

- (i) The amounts payable to Contractor shall be computed by multiplying the appropriate hourly rates prescribed in the Contract by the number of direct labor hours performed. Payroll records or time cards should be signed by the Princeton University Project Manager before noon the next work day, to verify work performed the preceding day. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. Applications for Payment may be submitted once each month (or at more frequent intervals, if approved by Princeton University). The Contractor shall substantiate Applications for Payment by evidence of actual payment and by individual daily job time cards, or other substantiation approved by Princeton University. Promptly after receipt of each substantiated Application for Payment, Princeton University shall, except as otherwise provided in this Contract, and subject to the terms of Clause I1(e)(4), pay the Application for Payment as approved.
- (ii) Unless the Contract prescribes otherwise, the hourly rates in the Contract shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Contract and overtime work is approved in advance by Princeton University, overtime rates shall be negotiated. If the Contract provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by Princeton University.

(2) Materials and Contracts.

- (i) Allowable costs of direct materials shall be determined by Princeton University. Reasonable and allocable material handling costs may be included in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general administrative expense allocated to direct materials in accordance with the Contractor's usual accounting practices. The Contractor shall be reimbursed for items and services purchased directly for the Contract only when cash, checks, or other forms of actual payment have been made for such purchased items or services. Direct materials, as used in this Clause, are those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product.
- (ii) The cost of lower-tier contracts that are authorized under this Contract shall be reimbursable costs under this clause provided that the costs are consistent with subparagraph (3). Reimbursable in connection with lower-tier contracts shall be limited to the amounts paid to the Contractor in the same manner as for items and services purchased directly for the Contract under paragraph (1).
- (iii) To the extent possible, the Contractor shall--
  - Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory material.
  - Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify Princeton University and give the reasons. Credit shall be given to Princeton University for cash and trade discounts, rebates, allowances, credits, salvage, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The benefits lost without fault or neglect on the part of the Contractor, or lost through fault of Princeton University, shall not be deducted from gross costs.

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- (3) Total Cost. It is estimated that the total cost to Princeton University for the performance of this Contract shall not exceed the Not-to-Exceed Price set forth in the Contract and the Contractor agrees to use its best efforts to perform the Work specified in the Contract and all obligations under this Contract within such Not-to-Exceed Price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this Contract in the next succeeding thirty (30) days, if added to all other payments and costs previously accrued, will exceed eighty-five percent (85%) of the Not-to-Exceed Price in the Contract, the Contractor shall notify Princeton University giving a revised estimate of the total price for performing this Contract with supporting reasons and documentation. If at any time during performing this Contract, the Contractor has reason to believe that the total price to Princeton University for performing this Contract will be substantially greater or less than stated Not-to-Exceed Price, the Contractor shall so notify Princeton University, giving a revised estimate of the total price for performing this Contract, with supporting reasons and documentation. If at any time during performance of this Contract, Princeton University has reason to believe that the cost required to perform the Work of this Contract will be substantially greater or less than the stated Not-to-Exceed Price, Princeton University will so advise the Contractor, giving the then-revised estimate of the total amount of effort to be required under the Contract.
- (4) Not-to-Exceed Price. Princeton University shall not be obligated to pay the Contractor any amount in excess of the Not-to-Exceed Price in the Contract, and the Contractor shall not be obligated to continue performance if to do so would exceed the Not-to-Exceed Price set forth in the Contract, unless and until Princeton University shall have notified the Contractor in writing that the Not-to-Exceed Price has been increased and shall have specified in the notice a revised Not-to-Exceed Price that shall constitute the Not-to-Exceed Price for performance under this Contract. When and to the extent that the Not-to-Exceed Price has been increased, any hours expended and material costs incurred by the Contractor in excess of the Not-to-Exceed Price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the Not-to-Exceed Price.
- (f) Applications for Payment may include the cost of material or equipment not incorporated in the Work, but delivered and suitably stored at the site or in an approved off-site location if:
- (1) Payment for material delivered to locations other than the Site is specifically authorized by this Contract;
  - (2) The Contractor furnishes evidence satisfactory to Princeton University in its discretion that Contractor has acquired free and clear title to such material and that the material will be used to perform this Contract;
  - (3) Storage and security procedures for the material have been approved by Princeton University, satisfactory evidence of insurance covering such material (with Princeton University named as an additional insured) has been provided to Princeton University, procedures for identifying and segregating the material (whether by serial numbers, tagging, photographs or other methods) have been approved by Princeton University, and the form and substance of bills of sale transferring title to Princeton University (if and when directed by Princeton University) have been approved by Princeton University (all such approvals in Princeton University's discretion);
  - (4) Contractor assumes all risk of loss to the material, remains liable for delivery to and installation at Site, and for warranting the material as required by the Contract; and,
  - (5) All other documentation required by Princeton University has been provided by Contractor.
- (g) Each Application for Payment constitutes a certification by the Contractor that:
- (1) The Application for Payment represents a just estimate of the amount properly payable to Contractor under the terms of the Contract;
  - (2) All due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Application for Payment;
  - (3) The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment; and
  - (4) The Contractor further warrants that, upon submittal of an Application for Payment, all Work for which payment has been previously approved and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, Claims (as defined in Clause J3) and/or other claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.



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(h) Each Application for Payment shall be accompanied by a written waiver of liens and release in the applicable form set forth in Section I4 - Release and Lien Waiver Exhibits, executed by Contractor and stating, among other things, the amounts of all payments received by it and confirming its right to file a construction lien pursuant to the Construction Lien Law (P.L. 1993, c. 318, section 37), and its rights under any construction lien that may be filed, and any amendments thereto, are waived and released in consideration for, upon receipt of, and to the extent of all payments received by it to date. Additionally, upon the request of Princeton University, in Princeton University's sole discretion, the Contractor shall provide written waivers of liens and releases in the applicable form set forth in Clause I4 - Release and Lien Waiver Exhibits, executed by all Subcontractors, suppliers to Contractor and Subcontractors, and equipment lessors to Contractor and Subcontractors.

(i) For GMP Contracts and Cost Plus Fixed Fee Contracts each Application for Payment shall be accompanied by a document that lists all tools, equipment, etc. with an individual value of \$500.00 or greater, unless another threshold amount is agreed to in writing by Princeton University, and purchased by the Contractor using funds from general conditions, general requirements or similar fund category.

(j) Retainage.

(1) GMP Contracts and Cost Plus Fixed Fee Contracts. Princeton University shall retain an amount equal to ten percent (10%) of the Cost of the Work and Contractor's Fee set forth in each Application for Payment submitted in accordance with paragraph (d) ("Retainage"). Except as otherwise agreed by Princeton University in its discretion, no amount of Retainage shall be paid to Contractor prior to final completion and Final Payment except as expressly provided herein.

(2) Fixed Price Contracts. Princeton University shall retain an amount equal to ten percent (10%) of the full amount that Contractor seeks to be paid as set forth in each Application for Payment submitted in accordance with paragraph (d) above ("Retainage"). Except as otherwise agreed by Princeton University in its discretion, no amount of Retainage shall be paid to Contractor prior to final completion and Final Payment except as expressly provided herein.

(3) Time-and-Material Contracts. Princeton University shall retain an amount equal to five percent (5%) of the price of the Work set forth in each Application for Payment submitted in accordance with paragraph (e) above ("Retainage").

(4) Reduction in Retainage for All Types of Contracts.

(i) When the Contractor achieves Substantial Completion of all of the Work pursuant to all requirements of the Contract Documents, and the Final Punchlist and punchlist completion schedule have been approved by Princeton University and the Architect/Engineer, then Princeton University shall pay all amounts due and remaining unpaid to Contractor, less whatever portion of the Retainage Princeton University deems appropriate, in its discretion, to continue to hold until final completion and Final Payment to protect any of its interests under the Contract, and less two hundred percent (200%) of the estimated cost to complete the Work on the punchlist, as solely determined by Princeton University.

(ii) Notwithstanding the preceding, when a Subcontractor has satisfactorily completed its Work (other than Work related to building-wide systems and finishes), Contractor may request payment for one hundred percent (100%) of the Subcontract amount, and Princeton University may consent, in its sole discretion, to release portions of the Retainage for Costs of the Work relating to any such early stage completed Subcontracts prior to Substantial Completion or final completion. As an additional condition to release of 100% of the Retainage of a Subcontractor (if so agreed by Princeton University in its sole discretion), the Subcontractor shall submit all Project close-out documents including, but not limited to, record documents/As-Built Drawings, operations and maintenance manuals, warranties and correction guarantees, a final lien waiver and release in the form required by this Contract, and if applicable, consent of surety to release of Retainage and Final Payment. In no event shall any interest be due and payable by Princeton University to Contractor, any Subcontractor or any other party on any of the sums retained by Princeton University pursuant to any of the terms or provisions of the Contract, including but not limited to Retainage.

(k) Princeton University or, at Princeton University's request, the Architect/Engineer will review Contractor's Application for Payment and will take appropriate action thereon. Within twenty (20) days of submission of a proper Application for Payment, if Princeton University plans to not approve the application, in whole or in part, it shall provide a written statement of the amount that will not be approved and the reason it is not approved. For all types of Contracts, such amount as may be approved for payment shall be payable by Princeton University not later than the later of (i) the twentieth (20th) day of the month next succeeding the date of submission of an appropriate Application for Payment (with all documentation and information required



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## CONSOLIDATED TERMS & CONDITIONS FOR CONSTRUCTION CONTRACTS

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by the Contract), if submitted in accordance with Clause I1(d), or (ii) thirty (30) days after the submission of an appropriate Application for Payment (with all documentation and information required by the Contract) if submitted later than the time set forth in Clause I1(d). Princeton University shall be entitled to rely on the accuracy and completeness of the information provided by Contractor and shall not be deemed to have: reviewed or made audits of copies of requisitions received from Subcontractors and material suppliers or other the supporting data provided to Princeton University to substantiate Contractor's right to payment; made exhaustive or continuous on-site inspections; reviewed construction means, methods, techniques, sequences or procedures; or made examinations to ascertain how or for what purpose Contractor has used the moneys previously paid on account of this Contract. Approval of or the payment of any Application for Payment, including the final payment does not constitute approval or acceptance of any item of cost in such Application for Payment, nor does it constitute acceptance of the Work. Partial use or occupancy of the Project by the Owner likewise shall not constitute acceptance of the Work.

(l) Notwithstanding the foregoing provisions, Princeton University shall not be obligated to make any payment to Contractor hereunder if any one or more of the following conditions exists:

- (1) Contractor is in default of any of its obligations hereunder or otherwise is in default under any requirements of the Contract Documents.
- (2) Any part of such payment is attributable to Work that is defective or not performed in accordance with the Contract Documents.
- (3) Contractor has failed to make payments promptly to Contractor's Subcontractors or for material, or equipment, or labor used in the Work for which Princeton University has made payment to Contractor.
- (4) If Princeton University, in its reasonable discretion, determines that the portion of the Contract Price remaining unpaid will not be sufficient to complete the Work in accordance with the Contract Documents, whereupon no additional payments will be due Contractor hereunder unless and until Contractor, at its sole cost, performs a sufficient portion of the Work so that such portion of the Contract Price then remaining unpaid is determined by Princeton University to be sufficient to so complete the Work.
- (5) Erroneous estimates of the percentage of Work performed.
- (6) If Princeton University has offsets or backcharges that reduce or eliminate any amounts otherwise due to Contractor.

(m) When payment is received from Princeton University, the Contractor shall immediately pay all Subcontractors, materialmen, laborers, and suppliers the amount they are due for the Work covered by such payment. In the event Princeton University becomes informed or has a reasonable basis to believe the Contractor has not paid any Subcontractor, materialman, laborer or supplier as provided herein, Princeton University may, in its sole discretion, issue future checks to such Subcontractors in appropriate amounts otherwise due hereunder naming any such Subcontractor, materialman, laborer or supplier as payee. Such direct payment to any such Subcontractor, materialman, laborer or supplier, by Princeton University, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check, shall not create any rights in such Subcontractor, materialman, laborer or supplier against Princeton University, and shall not be deemed to commit Princeton University to repeat the procedure in the future. Any direct payment to any such Subcontractor, materialman, laborer or supplier hereunder shall constitute payment in satisfaction of Princeton University's obligations under this Contract and the full amount of such payment shall be credited against the Contract Price.

### CLAUSE I2 RELEASE/LIENS

(a) **Partial Waiver and Release of Liens.** Contractor hereby agrees and acknowledges that its rights to file a construction lien pursuant to the Construction Lien Law (PL 1993, c. 318, section 37) for work, services, material or equipment and its rights under any construction lien which may be filed, and any amendments thereto, are hereby waived and released in consideration for and to the extent of all payments received by Contractor hereunder.

(b) **Inclusion of Lien Provision in Subcontract.** Contractor agrees that it will cause all contracts with and among (i) Subcontractors, (ii) suppliers to Contractor and Subcontractors, and (iii) equipment lessors to Contractor and Subcontractors to contain a waiver and release of liens clause consistent with paragraph (a) above, so that all (i) Subcontractors, (ii) suppliers to Contractor and Subcontractors, and (iii) equipment lessors to Contractor and Subcontractors acknowledge that their rights to file a construction lien pursuant to the Construction Lien Law (PL 1993, c. 318, section 37) for work, services, material or equipment, and their rights under any construction lien which may be filed, and any amendments thereto, are waived and released in consideration for and to the extent of all payments received by them.

(c) **Delivery of Releases and/or Affidavits.** Upon the request of Princeton University, or as required by this Section I "Payments", Contractor agrees to deliver, within five (5) business days of the request, written waivers and releases of liens in form and substance satisfactory to Princeton University executed by Contractor and by all (i) Subcontractors, (ii) suppliers to

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Contractor and Subcontractors, and (iii) equipment lessors to Contractor and Subcontractors stating the amounts of all payments received by them and confirming the waivers and releases referenced in paragraphs (a) and (b) above. If such releases and/or affidavits are requested, no payment under this Contract shall become due and payable until Princeton University has received them in complete and proper form. Such releases shall be in the forms set forth in the Exhibits attached to the end of this Section, as follows:

Exhibit A	Contractor's Partial Release and Certificate of Partial Payment
Exhibit B	Subcontractor's Partial Release and Certificate of Partial Payment
Exhibit C	Contractor's Final Release and Certificate of Final Payment
Exhibit D	Subcontractor's Final Release and Certificate of Final Payment

(d) **Discharge, Indemnification and Withholding of Payment.** Provided that Princeton University has made payments to the Contractor in accordance with the provisions of this Contract, including permitted deductions and withholding, Contractor shall, wholly defend, indemnify and hold harmless Princeton University from and against any and all mechanic's liens or claims by Contractor's employees, laborers, material suppliers, Subcontractors, or any others for whom Contractor is responsible in connection with the Work and against all damages, liability, costs and expenses arising out of or relating thereto including all reasonable attorneys' fees and disbursements (including attorneys' fees relating to the enforcement of this provision, and any appeals, and in obtaining judgments and collection of such costs and expenses), that Princeton University may suffer or incur as a result thereof. In connection with the foregoing, Contractor shall secure the prompt discharge and/or removal of all mechanic's liens filed in connection with the Work (by posting a suitable bond pursuant to N.J.S.A. 2A:44A-31 or otherwise) within thirty (30) days of notice from Princeton University. If Contractor fails to commence the process to discharge or remove or bond any lien within five (5) days after notice of the lien, and notify Princeton University thereof in writing that it is doing so, or if Contractor thereafter commences the same but fails to diligently prosecute and achieve such discharge or removal or bonding to the satisfaction of Princeton University in its sole discretion within the thirty (30) days required for such, Princeton University shall, without limitation to Contractor's full defense and indemnification obligations under this provision, which are in addition to and supplement Clause G2, have the right to remove, discharge or bond such lien and deduct the cost thereof (including the amount paid or bonded plus reasonable attorneys' fees, disbursements, and other necessary costs) from any payment due the Contractor. Upon the filing of a lien, Princeton University may withhold from Contractor all moneys that Princeton University reasonably determines it may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees. The provisions of this paragraph (d) are in addition to any other rights available to Princeton University under the Contract and/or law and shall survive the completion of the Work, its final acceptance, the making of final payment to the Contractor, and/or the termination of the Contract.

### CLAUSE I3 FINAL PAYMENT

(a) Ten (10) days after Contractor achieves final completion of the Work and final acceptance thereof by Princeton University, or as soon thereafter as possible, Contractor shall submit a final Application for Payment which will set forth all amounts due and remaining unpaid to Contractor, including Retainage and the unpaid portion of Contractor's Fee ("Final Payment"). Upon approval thereof by Princeton University and, at Princeton University's request, by the Architect/Engineer, Princeton University shall pay to Contractor the amount approved as due under such final Application for Payment within thirty (30) days after its submission in accordance with the other requirements of this Section I. The final Application for Payment shall be accompanied by a written final waiver and release of liens executed by the Contractor and, if requested by Princeton University, by any or all Subcontractors, suppliers to Contractor and Subcontractors, and equipment lessors to Contractor and Subcontractors in the forms required by this Contract or as may be otherwise specified by Princeton University in its discretion.

(b) Acceptance by the Contractor of Final Payment shall constitute a waiver of Claims or right to make Claims and release of Princeton University from any and all Claims that were made or could have been made by the Contractor against Princeton University arising out of or relating to this Contract as of the date of acceptance of that Final Payment

## SECTION I -- RELEASE AND LIEN WAIVER EXHIBITS

### EXHIBIT A - CONTRACTOR'S PARTIAL RELEASE AND CERTIFICATE OF PARTIAL PAYMENT

With reference to Application for Payment No. \_\_\_\_\_ dated \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ submitted under Contract No. \_\_\_\_\_ as amended by and between The Trustees of Princeton University ("Princeton University") and \_\_\_\_\_ ("Contractor") for the construction of \_\_\_\_\_ (the "Project"), Contractor hereby certifies and represents that it has received full payment for, and that it has made full payment to all of its subcontractors and materialmen for all costs, charges and expenses incurred by it or by them on its behalf, for work, labor, services, materials and equipment supplied to the foregoing premises and/or used in connection with the

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Work under said Contract through and including the effective date of Contractor's last application for payment (excluding retainage).

In consideration of, and conditioned upon the payment to Contractor of the sum of \$ \_\_\_\_\_ under the aforementioned Application for Payment, Contractor hereby unconditionally releases and forever discharges Princeton University and its respective officers, directors, agents, and representatives, and Princeton University's premises and property, from all claims for payment, liens and obligations of every nature, whether choate or inchoate and including without limitation all mechanics' and materialmen's liens, construction liens and other liens and claims (including Claims as defined in Clause J3 of the parties' Contract) now, or which in the future may be owned, claimed or asserted by Contractor against the aforesaid land and improvements (including personal property related thereto) or against Princeton University arising out of or in connection with the performance of the said Contract and all amendments thereto up to the date hereof (other than retainage).

*Executed this date: \_\_\_\_\_ by \_\_\_\_\_ /Form signed and dated by Contractor/*

### EXHIBIT B - SUBCONTRACTOR'S PARTIAL RELEASE AND CERTIFICATE OF PARTIAL PAYMENT

With reference to Subcontractor Application for Payment No. \_\_\_\_\_ dated \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ submitted under Subcontract No. \_\_\_\_\_ by and between \_\_\_\_\_ ("Subcontractor") and \_\_\_\_\_ ("Contractor") for \_\_\_\_\_ work for the construction of \_\_\_\_\_ (the "Project"), the undersigned Subcontractor hereby certifies and represents that it has received full payment for, and that it has made full payment to all of its subcontractors and materialmen for all costs, charges and expenses incurred by it or by them on its behalf, for work, labor, services, materials and equipment supplied to the foregoing premises and/or used in connection with the Work under said Subcontract through and including the effective date of Subcontractor's last application for payment (excluding retainage).

Subcontractor further certifies that to its best knowledge and belief, each of its subcontractors and materialmen has made full payment of all costs, charges and expenses incurred by them or on their behalf for work labor, services materials and equipment supplied to the foregoing premises and/or used by them in connection with the Subcontractor's work under said Subcontract, up to the effective date of Subcontractor's last application for payment (excluding retainage). Prior to the date of this Release, the Undersigned further certifies that it has received payments from the Contractor that total \$ \_\_\_\_\_.

In consideration of, and conditioned upon the payment to Subcontractor of, the payment of the sum of \$ \_\_\_\_\_ under Subcontractor Application for Payment No. \_\_\_\_, the Subcontractor hereby unconditionally releases and forever discharges the Princeton University and their affiliates and their respective officers, directors, agents, and representatives and Princeton University's premises and property from all claims, liens and obligations of every nature arising out of or in connection with the performance of the said Subcontract and all amendments thereto on account of materials and/or labor furnished up to the date hereof (other than retainage).

*Executed this date: \_\_\_\_\_ by \_\_\_\_\_ /Form signed and dated by Subcontractor/*

### EXHIBIT C - CONTRACTOR'S FINAL RELEASE AND CERTIFICATE OF FINAL PAYMENT

With reference to Contract No. \_\_\_\_\_ as amended, by and between The Trustees of Princeton University ("Princeton University") and \_\_\_\_\_ ("Contractor") for construction of \_\_\_\_\_ (the "Project"); Contractor hereby certifies and represents that, conditioned upon payment of the sum of \$ \_\_\_\_\_ pursuant to its Application for Final Payment dated \_\_\_\_\_, it has received full payment of all costs, charges and expenses incurred by it or on its behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used in connection with its Work under said Contract.

In consideration of and conditioned upon the payment of the final payment as set forth above, Contractor hereby unconditionally releases and forever discharges Princeton University and its officers, directors, agents and representatives, and Princeton University's premises and property, from all claims (including Claims as defined in Clause J3 of the parties' Contract) and causes of action, and all mechanics' and materialmen's liens, construction liens and other liens, that now or that in the future may be owned, claimed or asserted by Contractor against Princeton University, or the aforesaid land and improvements (including personal property related thereto), arising out of or in connection with the performance of the said Contract and all amendments thereto.

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## CONSOLIDATED TERMS & CONDITIONS FOR CONSTRUCTION CONTRACTS

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As additional consideration for the final payment, Contractor agrees, to the fullest extent permitted by law, to indemnify and hold harmless Princeton University from and against all costs, losses, damages, claims (including Claims as defined in Clause J3 of the parties' Contract), causes of action, judgments and expenses, including attorney's fees, arising out of or in connection with any claims (including Claims as defined in Clause J3 of the parties' Contract) or causes of action for payment or any liens asserted against Princeton University, or the aforesaid land and improvements (including personal property related thereto), which arise out of the performance of the work under the Contract and which may be asserted by the Contractor or any of its subcontractors, sub-subcontractors or materialmen of any tier thereof. As additional consideration for the final payment aforementioned, Contractor hereby unconditionally releases and forever discharges Princeton University from all claims for payment and all other claims (including Claims as defined in Clause J3 of the parties' Contract) and causes of action of every nature, known or unknown, arising out of or in connection with the performance of the said Contract.

This release and discharge shall not apply to claims (including Claims as defined in Clause J3 of the parties' Contract) that Contractor may have against Princeton University for contribution or indemnity (if any) based upon third party claims asserted against Contractor for personal injury or damage to property asserted after the date hereof. Contractor further declares that it has made proper payment of all monies due to all of its employees, subcontractors and suppliers of labor, materials, and/or equipment, and agrees to indemnify and hold Princeton University harmless from any claim or demand it might suffer by reason of failure of this certification.

The foregoing shall not relieve Contractor of its obligations under the provisions of said Contract, as amended, which by nature survive completion of the Work including without limitation, warranties, guarantees, and indemnities.

*Given under our hand and seal this date: \_\_\_\_\_ by \_\_\_\_\_/Form signed and dated by Contractor/*

### EXHIBIT D - SUBCONTRACTOR'S FINAL RELEASE AND CERTIFICATE OF FINAL PAYMENT

With reference to Subcontract No. \_\_\_\_\_ as amended, by and between \_\_\_\_\_ ("Subcontractor") and \_\_\_\_\_ ("Contractor") for \_\_\_\_\_ work for the construction of \_\_\_\_\_ (the "Project"), the undersigned Subcontractor hereby certifies and represents that conditioned upon full payments of the sum of \$\_\_\_\_\_ (the "final payment") pursuant to Subcontractor Application for Payment No. \_\_\_\_\_ dated \_\_\_\_\_ in the amount of \$\_\_\_\_\_ it has made full payment of all costs, charges and expenses incurred by it or on its behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used in connection with its work under said Subcontract.

The undersigned Subcontractor further certifies that to its best knowledge and belief, each of its subcontractors and materialmen has made full payment of all costs, charges and expenses incurred by them or on their behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used by them in connection with the Subcontractor's work under said Subcontract. Prior to the date of this Release, the Undersigned further certifies that it has received payments from the Contractor which total \$\_\_\_\_\_.

In consideration for the payment of the final payment as set forth above, the Subcontractor hereby unconditionally releases and forever discharges Princeton University and the Contractor and their affiliates and their respective officers, directors, agents, and representatives and Princeton University's premises and property from all claims, causes of action, liens and obligations of every nature arising out of or in connection with the performance of the said Subcontract and all amendments thereto. This release and discharge shall not apply to claims that Subcontractor may have against Princeton University or Contractor for contribution or indemnity (if any) based upon third party claims asserted against Subcontractor for personal injury or damage to property asserted after the date hereof.

As additional consideration for the final payment, the Subcontractor agrees, to the fullest extent permitted by law, to indemnify and hold harmless Princeton University and Contractor from and against all costs, losses damages, claims, causes of action, judgments and expenses, including attorney's fees arising out of or in connection with claims against Princeton University or Contractor which claims arise out of the performance of the work under the Subcontract and which may be asserted by the Subcontractor or any of its suppliers, subcontractors of any tier or any of their representatives, officers, agents or employees.

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The foregoing shall not relieve the Subcontractor of its obligations under the provisions of said Subcontract, as amended, which by nature survive completion of the Work including without limitation, warranties, guarantees, and indemnities.

Executed this date: \_\_\_\_\_ by /Form signed and dated by Subcontractor/

### SECTION J -- LEGAL REQUIREMENTS, CLAIMS AND DISPUTE RESOLUTION

#### CLAUSE J1 COMPLIANCE WITH LAWS

(a) Contractor shall perform the Work in full compliance with all applicable federal, state, and local, statutes, laws, codes, rules, ordinances, building and safety codes, regulations, construction requirements, lawful orders of public and quasi-public authorities and agencies, and governments or governmental agencies or other authorities with jurisdiction over the Work or the Project, and regulations and requirements of Princeton University ("Legal Requirements"). No acts or failures to act or statements or approvals or consents by Princeton University during the performance of the Work shall limit the Contractor's sole responsibility for complying with all Legal Requirements.

(b) Contractor shall immediately advise Princeton University of any violation notice or similar document issued to it by any authority having jurisdiction over the Work or the Project and shall provide Princeton University a copy of said violation notice or similar document. Contractor shall appear at hearings, proceedings or in court with respect to such compliance or with respect to violations or claimed violations of any Legal Requirements, and pay all legal fees, fines and penalties incurred by or imposed upon Princeton University or upon Contractor relating to Contractor's noncompliance, violations or claimed noncompliance or violations.

#### CLAUSE J2 APPLICABLE LAW

All Claims or other disputes between the parties, including those regarding the validity, construction of, interpretation of, and the parties' obligations under, this Contract 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 Clause J4 below, Princeton University and Contractor 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.

#### CLAUSE J3 CLAIMS, CLAIM PROCEDURES

(a) A "Claim" is a demand or assertion by one of the parties against the other party seeking, as a matter of right, payment of money or increase in the Contract Price, extension of the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other claims, controversies, and/or disputes and matters in question between Princeton University and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. Any Claims shall be made pursuant and are subject to the procedures and other requirements established by Clauses J3, J4 and J5 and any other applicable provisions of these Terms and Conditions and/or the Contract.

(b) **Contractor's Notice of Claim.** In order to provide Princeton University with the information necessary to investigate and evaluate the Contractor's potential entitlement to any remedy for a Claim or potential Claim, and to provide Princeton University with the opportunity to take action to avoid or mitigate the effects of any events or circumstances that may be alleged by Contractor as any Claim or potential Claim, including avoiding or mitigating additional costs or delays if Contractor would otherwise be entitled to an increase in the Contract Price or an extension to the Contract Time, it is an express condition precedent to Contractor's ability to pursue any Claim or potential Claim or any remedy whatsoever relating to the events or circumstances regarding such that Contractor must deliver a written notice to Princeton University, in full and timely compliance with the provisions of Clause J3(c) below, of any Claim or of any events or circumstances that give rise or may give rise to any Claim or right to Claim by the Contractor, including without limitation, the following:

- (1) an increase in the Contract Price;
- (2) an extension in the Contract Time to perform;
- (3) breach of contract by Princeton University;
- (4) delay or suspension of the Work, subject to the provisions of Clause E9;
- (5) compensation for the value of authorized Work performed outside the scope of the Contract Documents; or,
- (6) a Disputed Change Order.



(c) **Time Limit and other Requirements for Contractor's Notice of Claim, and Waiver of Claim.** The Contractor's written notice of Claim shall set forth: (i) the reasons for which the Contractor believes additional compensation or increase in the Contract Price will or may be due or additional Contract Time should be granted; (ii) the nature of the costs involved; (iii) Contractor's plan for mitigating such costs; (iv) if reasonably ascertainable, the amount of the potential Claim; (v) if the Contractor's Claim relates to or will affect the critical path of the Project Schedule, demonstrable proof of such; and (vi) Contractor's plan for mitigating any such delay. Time is expressly of the essence with respect to Contractor's giving of notice of any Claim or potential Claim to Princeton University as specified in this Contract, so as to provide Princeton University an opportunity to remedy any breach or to take action to avoid or mitigate any cause for any cost increases or escalation or delay to the performance of the Work. It is an express condition precedent to Contractor's ability to pursue any Claim for increase in the Contract Price or extension of Contract Time or any Claim for damages against Princeton University or the Project or any remedy whatsoever relating to the Contract, that Contractor deliver to Princeton University the written notice in compliance with Clauses J3(b) and J3(c), within five (5) business days after the date on which the Contractor has knowledge, or should reasonably have knowledge, of the events or circumstances giving rise to such Claim or potential right to Claim. If Contractor does not provide the written notice within the time required and otherwise in strict conformance with the requirements of Clauses J3(b) and J3(c) and any other applicable terms of the Contract, Contractor shall have conclusively and expressly waived such Claim or any potential right to Claim and/or any ability to pursue any remedies for the subject matter of such Claim or potential right to Claim and Contractor shall be forever estopped from asserting otherwise.

**CLAUSE J4 DISPUTE RESOLUTION**

(a) If the Contractor wishes to assert any Claim against Princeton University, Contractor shall first, as a condition precedent to commencing litigation against Princeton University arising out of or relating to such Claim, provide timely written notice to Princeton University required by Clause J3 and any other timely written notices required elsewhere in these Terms and Conditions and the Contract and otherwise comply with the terms of this Clause J4. After Contractor provides written notice of a Claim to Princeton University as provided in Clause J3, if such Claim is not otherwise waived by Contractor pursuant to Clause J3 or other applicable provisions of the Contract, then Princeton University's Representative and Contractor's Representative shall promptly confer and discuss the potential for a reasonable resolution of the issue.

(b) If such representatives are unable to resolve any such Contractor Claim, and Contractor desires to proceed with its Claim, then Contractor shall give written notice to Princeton University that the dispute resolution process set forth below is being invoked. Such notice shall identify with reasonable particularity the nature of the Claim and the prior notices and other information previously delivered to Princeton University in connection with such. Contractor may not pursue any Claim except pursuant to the procedures set forth in this Clause J4.

(c) If the Contractor Claim is not resolved within fifteen (15) business days after the date of such written notice under paragraph (b) above (or such longer time agreed to in writing by both parties), the matter shall be deemed referred for possible resolution to senior officers of each party (or their designees) at such time.

(d) If such officers or designees are unable to resolve the Contractor Claim within fifteen (15) business days after it is referred to them (or such longer time agreed to in writing by both parties), they shall, upon written demand (notice) by either party, within ten (10) business days thereafter (or such longer time agreed to by both parties), agree upon and retain (with expenses to be borne equally by the parties) a neutral individual to act as a 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 Contractor 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.

(e) If the Contractor Claim is not settled 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 any time thereafter in compliance with any other requirements of this Contract or applicable law 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 as provided in Clause J2, and Contractor may not initiate litigation in any other forum. Contractor may not initiate litigation against Princeton University without first utilizing and completing the process set forth in this Clause J4, except for seeking a temporary restraining order and/or a preliminary injunction or for the enforcement of lien rights (but only if and to the minimum extent necessary to comply with initial statutory limitation periods with regard to same, and not otherwise pursuing or progressing same until litigation is authorized pursuant to this Clause J4). 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 notice is sent under paragraph (b) above until the first day upon which the Contractor is permitted to initiate litigation pursuant to the terms of this Clause J4, but only if such initial notice sent under



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paragraph (b) above was timely under the applicable statute of limitation or any shorter time required by this Contract for Contractor to commence or assert such Claim in the first instance.

(f) Contractor agrees that the requirements of this Clause J4 shall be included in all of its Subcontracts so that all Subcontractors shall be bound to engage in the procedures and otherwise be subject to the same terms of this Clause J4 as they may respectively apply to any claim, controversy or dispute involving any Subcontractor with regard to the Project, including, without limitation: any Subcontractor claims, controversies or disputes with Contractor; any Contractor claims, controversies or disputes with any Subcontractors; any Princeton University claims, controversies or disputes with any Subcontractors; and/or any claims, controversies or disputes where joinder of any Subcontractor 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 Contractor's Subconsultants, without limitation, the procedure set forth above (and Princeton University's exemption from such as provided in paragraph (h) 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, a copy of such notice and all subsequent notices shall be provided to Princeton University for any claim, controversy or dispute solely between or among Contractor and any Subcontractor(s) for which any of them provides the other with written notice to demand mediation.

(g) The Contractor expressly agrees: (i) to being joined in any mediation or litigation between Princeton University and one or more third parties giving rise to a Claim by Princeton University against Contractor relating to the Project; and (ii) to the joinder of one or more third parties in any mediation or litigation between Princeton University and Contractor where such mediation or litigation gives rise to any claim, controversy, or dispute between Princeton University and any such third parties.

(h) Notwithstanding anything in this Clause J4 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 paragraphs (a) through (e). Accordingly, there shall be no limitation on Princeton University's ability to commence litigation with regard to any Claim relating to this Contract and/or any other claim, controversy or dispute relating to the Project. 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 Contractor or any claim, controversy or dispute against any of Contractor's Subcontractors (as a third party beneficiary of the Subcontract) pursuant to the procedures provided in the above paragraphs (b) through (e), Princeton University may voluntarily do so at its sole discretion upon written notice to the Contractor (and any respective Subcontractor(s)) that Princeton University is invoking said procedures, which shall then be binding upon Contractor and any respective Subcontractors, 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 Contractor and/or any claim, controversy or dispute against any of Contractor's Subcontractors notwithstanding the procedures set forth in the above paragraphs (a) through (e), 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 Contractor.

- (1) It is further expressly understood that, without limitation, this paragraph (h) and its subparts shall likewise apply to any and all claims, controversies or disputes which Princeton University may have against any of Contractor's Subcontractors as a third-party beneficiary of such Subcontract.

### **CLAUSE J5 WORK TO CONTINUE DURING DISPUTES**

(a) Pending final resolution of any Claim, the Contractor shall proceed diligently with performance of the Contract and Princeton University shall continue to make payments in accordance with the Contract, subject to paragraphs (b) through (e) below and any other applicable terms of the Contract.

(b) If Princeton University and the Contractor are unable to agree as to whether or not a change in the Work and/or the Contract has occurred that would entitle the Contractor to an adjustment to the Contract Price and/or to the Contract Time (hereinafter "Disputed Work"), then the Contractor shall proceed expeditiously to perform the Disputed Work upon receipt of a written directive from Princeton University to do so (Disputed Change Order). The Contractor shall then maintain a separate record of all of its actual costs incurred to perform the Disputed Work on a daily basis, and the Contractor may submit a Claim pursuant and subject to Clauses J3 and J4, provided that such Claim was not otherwise waived by Clause H3 or any other provision of the Contract. For the purpose of this Clause J5(b), Contractor's record keeping requirements shall be the same as those in Clause H6(c).

(c) If Princeton University and the Contractor agree that a change in the Work and/or the Contract has occurred, but are unable to agree as to the adjustment to the Contract Price or the Contract Time resulting from the change (the "Disputed Changed Work"), then the Contractor shall proceed expeditiously to perform the Disputed Changed Work upon receipt of a written directive from Princeton University to do so (Disputed Change Order). The Contractor shall then maintain a separate record of all of its actual costs incurred to perform the Disputed Changed Work on a daily basis, and the Contractor may submit a Claim pursuant and subject to Clauses J3 and J4, provided that such Claim was not otherwise waived by Clause H3 or any other provision

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of the Contract. For the purpose of this Clause J5(c), Contractor's record keeping requirements shall be the same as those in Clause H6(c).

(d) In order to avoid delays to the Project, the Contractor shall continue in all instances to perform all of the Work, including without limitation all Disputed Work and all Disputed Changed Work, and shall not delay, slow down or refuse to perform any of the Work pending the resolution of any or all Claims; subject, however, to a reservation of rights by the Contractor and Princeton University against each other with regard to all such Claims provided that such Claims were not waived by Contractor in accordance with the terms of the Contract.

(e) The records required to be maintained under paragraphs (b) and (c) above are for the sole purpose of documenting the performance of the Disputed Work and/or Disputed Changed Work and shall not be determinative of the amount appropriately compensable for any such Work, or even if a change occurred, unless or until Princeton University agrees that the subject Work may be Disputed Changed Work and Princeton University issues a T&M Change Order pursuant to Clause H6; provided, however, that in no event shall the Contractor be entitled to payment for more labor, material or equipment than is quantified by such documentation; and that no acknowledgement or signature by Princeton University or its agent on such documentation shall be deemed an agreement that a change in the Work and/or the Contract has occurred, to the amount appropriately compensable, if any, with respect to any Disputed Work or Disputed Changed Work, or to the method of pricing any Disputed Work or Disputed Changed Work, notwithstanding any statement to the contrary that may appear on such documentation.

### **CLAUSE J6 RIGHTS AND REMEDIES**

Except as otherwise provided in this Contract (including without limitation Clause J4 above), the duties and obligations imposed upon Contractor, and the rights and remedies available to Princeton University, as set forth in this Contract shall be in addition to and not a limitation upon any other duties and obligations imposed upon the Contractor by law or in equity and any other rights and remedies available to Princeton University at law or in equity. The rights and remedies of Princeton University set forth in this Contract 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 Contractor or any other person or entity, including a surety, if any.

### **CLAUSE J7 NO WAIVER**

Any failure on the part of Princeton University to complain of any act or failure to act by the Contractor or to declare the Contractor 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 Contractor under the Contract or constitute any approval of or acquiescence in any breach by Contractor, 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 Contractor of any obligations under the Contract shall be deemed or construed to be a consent or waiver with respect to any other breach by Contractor under the Contract.

### **CLAUSE J8 STATUTE OF LIMITATIONS**

The Contractor and the Contractor's surety, if any, agree that for purposes of any statute of limitations that may govern Princeton University's right to assert a Claim or bring suit against the Contractor or the Contractor's surety for anything arising out of this Contract, such statute shall not begin to run until the later of: (a) at least sixty (60) days after Substantial Completion of the Project; (b) the date on which Princeton University identified Work as defective or non-conforming; or (c) knew the basis for the Claim against the Contractor.

### **CLAUSE J9 TAXES**

Princeton University is a non-profit educational institution exempt from paying certain federal, state, and local taxes, including New Jersey Sales Taxes (Exemption No. EO-210-634-501) and New Jersey Excise Taxes (Exemption No. A-110839). Pursuant to N.J.S.A. 54:32B-8.22 this exemption applies to all purchases by contractors or repairmen of materials, supplies or services for the exclusive use in erecting structures or building on, or otherwise improving, altering or repairing its real property. Contractor shall utilize the exemption to the fullest extent possible. Contractor shall not be reimbursed for any taxes subject to the aforementioned exemptions regardless of whether Contractor has paid such taxes, and shall reimburse Princeton University should any payment to Contractor include reimbursement for such taxes.

### **CLAUSE J10 ASSIGNMENT**

(a) Except as otherwise provided herein, neither party to this Contract shall assign this Contract or sublet in whole without the written consent of the other; nor shall Contractor assign any moneys due or to become due to it hereunder, without the previous written consent of Princeton University. Princeton University may, however, assign this Contract to any other party or entity, provided Princeton University continues to be responsible for the performance by said assignee of all undertakings of Princeton University in this Contract. Subject to the foregoing, this Contract shall inure to the benefit of and be binding on the parties hereto and their respective successors and assigns.

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(b) Contractor hereby assigns to Princeton University (and its assigns) all its interest in any Subcontract or purchase orders now existing or hereinafter entered into by Contractor for performance of any part of the Work, which assignment will be effective only upon acceptance by Princeton University in writing and only as to those Subcontract and purchase orders which Princeton University designates in said writing. It is agreed and understood that Princeton University may accept assignment at any time during the course of construction prior to Final Payment, including but not limited to the time of a termination for convenience or a termination for default of the Contractor by Princeton University. It is further agreed that all Subcontracts and purchase orders shall provide that they are freely assignable by Contractor to Princeton University and assigns. It is further agreed and understood that such assignment is part of the consideration to Princeton University for entering into this Contract with Contractor and may not be withdrawn prior to final completion. In the event that Princeton University accepts the assignment of any such Subcontracts or purchase orders as set forth above, Contractor shall remain liable to such Subcontractors or suppliers (i) for any pre-assignment breaches by Contractor of its obligations to such Subcontractors or suppliers and (ii) for any monies due by Contractor to any such Subcontractors or suppliers for which Princeton University is not otherwise responsible to Contractor; and further provided that any acceptance of an assignment of a Subcontract or purchase order by Princeton University shall not include or constitute an acceptance of liability to any such Subcontractor or supplier for such pre-assignment breaches or monies due by Contractor.

### CLAUSE J11 PERMITS

(a) Princeton University is responsible to obtain the building permit and for making application and paying for the Temporary Certificate of Occupancy (TCO) and/or the Certificate of Occupancy (C of O) only; provided, however, that Contractor is responsible for anticipating, scheduling and coordinating the timely application for such permits and certificates.

(b) The Contractor is responsible for all sub code permits and all other permit and governmental fees, licenses and inspections necessary for proper execution and completion of the Work. The Contractor shall comply with and give notices required by all Legal Requirements. If the Contractor performs Work where it knew or should have known it to be contrary to any Legal Requirements, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

### CLAUSE J12 TERMINATION

(a) Princeton University Termination for Cause. If Contractor shall: (i) fail to commence the Work in accordance with the provisions of this Contract or fail to perform the Work to completion in a diligent, efficient, timely, workmanlike, skillful and careful manner and in strict accordance with the provisions of the Contract Documents (including the Scheduled Milestone Dates and/or the Scheduled Completion Date); (ii) fail to use an adequate amount or quality of personnel or equipment to complete the Work without undue delay; (iii) refuse or fail to correct deficient or defective Work; (iv) fail to perform any of its obligations under the Contract Documents; or (v) fail to make proper payment to a Subcontractor, supplier, or laborer; then when any of the above conditions exist, Princeton University, without prejudice to any other rights or remedies under the Contractor or at law or equity, shall have the right to terminate this Contract upon written notice identified as such notice of termination, effective upon three (3) business days following delivery of such written notice, following which time:

- (1) The Contract and the Contractor's right to proceed under this Contract shall be terminated; and
- (2) Princeton University may:
  - (i) Exclude the Contractor from the site and take possession of and use all of or any part of Contractor's equipment, materials, supplies and other property of any kind used by Contractor in the performance of the Work, and to use such property in the completion of the Work;
  - (ii) Take possession of materials stored off site by the Contractor;
  - (iii) Accept assignment of Subcontracts for which it chooses pursuant to Clause J10(b).
  - (iv) Complete the Work in any manner it deems desirable, including engaging the services of other parties therefore. Any act hereunder by Princeton University shall not be deemed a waiver of any other right or remedy of Princeton University. If after exercising any such remedy, the cost to Princeton University of the performance of the balance of the Work is in excess of that part of the Contract Price which has not been paid to Contractor hereunder, Contractor shall be liable for and shall reimburse Princeton University for such excess amount.

The notice provision in this Clause J12(a) is for informational purposes only and it is expressly agreed that Contractor shall have no right or opportunity to cure.

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(b) The right of termination for cause reserved to the Owner shall not be an exclusive remedy. No action taken by Princeton University under Clause J12(a) shall affect any of the rights and remedies of Princeton University granted by this Contract or by law or equity, or relieve Contractor from any consequences or liabilities for any and all damages arising from or relating to its acts or omissions or any breach or default of Contractor with respect to its obligations under the Contract or any other negligent act or omission or unlawful conduct.

(c) It is recognized that if Contractor files for bankruptcy, or is adjudged a bankrupt, or makes a general assignment for the benefit of its creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such could impair or frustrate Contractor's performance of this Contract. Accordingly, upon the occurrence of any such event, Princeton University shall be entitled to request from Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Princeton University to terminate this Contract and to invoke the accompanying right set forth in paragraph (a). Pending receipt of adequate assurance of performance and actual performance in accordance therewith, Princeton University shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be back charged against Contractor.

(d) Princeton University Termination for Convenience. Princeton University hereby reserves the right to terminate this Contract, in whole or in part, without cause for its convenience at any time and for any reason upon written notice to Contractor, effective immediately, unless otherwise provided in said notice. Upon receipt of written notice from Princeton University of such termination for convenience, the Contractor shall: (i) cease operations as directed in the notice; (ii) take actions necessary, or that Princeton University may direct, for the protection and preservation of the Work and the safety of the Site; (iii) tender for Princeton University's acceptance in its discretion, the assignment of Subcontracts pursuant to Clause J10(b); and (iv) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Subcontracts and purchase orders and enter into no further Subcontracts and purchase orders. Within thirty (30) calendar days of any such termination, Princeton University shall pay as the sole amount due to Contractor in connection with this Project:

- (1) sums due for Work performed to the effective date of termination including allowable profit or Fee and overhead on Work actually performed pursuant to the terms of the Contract, with the express agreement that Contractor shall not be entitled to receive payment for any unperformed terminated Work, including no payment for overhead or profit or Contractor's Fee relating to such unperformed terminated Work, with any Claims or potential Claims to such expressly waived; and
- (2) reasonable costs incurred by Contractor by reason of such termination, which costs shall be limited to reasonable shut-down and removal costs directly related to demobilizing off the Project site, plus reasonable similar severance costs incurred in terminating the Subcontracts or orders for materials (for which orders were made prior to the notice originally provided herein).

(e) In the event of a termination for convenience by Princeton University, Contractor shall remain liable to Princeton University for (i) defective work performed prior to the termination (whether discovered before or after termination), (ii) late completion damages to the extent of the delays to the critical path of the Project Schedule for which Contractor was responsible as of the date of the termination, and (iii) any other damages that survive a termination for convenience.

(f) Upon the determination by a court that termination of Contractor or its successor in interest pursuant to paragraph (a) above was wrongful, such termination will be deemed converted to a termination for convenience such that Contractor's remedy for wrongful termination shall be limited to the recovery of the payment permitted for termination for convenience as set forth in paragraph (d) above and Contractor's remaining obligations shall be as set forth in paragraph (e) above.

### SECTION K -- MISCELLANEOUS PROVISIONS

#### CLAUSE K1 NOTICES

All notices to be given pursuant to any provisions of the Contract 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 (with a signed receipt of the party to be notified), upon delivery; (2) if by depositing the same with any nationally recognized and reputable overnight delivery service 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; or (4) if delivered by US certified mail, return receipt requested to the party to be notified 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 Contractor Administrative Representative identified in the Agreement in one of the manners provided herein for such notice at the physical and/or email addresses for such representatives

as identified in the Agreement. Additionally, Contractor 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 Clauses J4(b) through (f). Written notice from Contractor 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 Clause D3 or elsewhere in the Contract 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 Contractor shall not under any circumstances be deemed written notice to Princeton University pursuant to this Clause K1. 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.

**CLAUSE K2 CAPTIONS AND HEADINGS**

The captions and headings contained in the Contract Documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit, or cast light upon the interpretation of the provisions to which they refer.

**CLAUSE K3 NO THIRD PARTY BENEFICIARIES**

Nothing contained in this Contract shall create any contractual obligation running from Princeton University to any Subcontractor of Contractor. Nothing contained in this Contract is intended to create third party beneficiary rights in any third party; provided, however, that notwithstanding the preceding the parties acknowledge and agree that Princeton University is an intended express third-party beneficiary of Contractor's Subcontracts with Subcontractors as more fully set forth in Clause D2.

**CLAUSE K4 OWNERSHIP AND USE OF DOCUMENTS**

All documents, including without limitation, all documents, work product and records in any medium (including audio or visual recordings) prepared by or on behalf of the Contractor in the performance of its services under the Contract, shall become the property of Princeton University when they are created, and Princeton University shall be entitled to use them in any way it desires in connection with the Project. The Contractor shall also have the right to use such documents but only in connection with this Project. To the extent that the documents and work product prepared by or on behalf of the Contractor incorporate any confidential or proprietary information of Princeton University (as designated pursuant to Clause K7), the Contractor shall not disclose such information to any third party without Princeton University's prior written consent. At any time upon demand by Princeton University, the Contractor shall furnish, or collect and make available, to Princeton University (or its designees, agents or representatives) a complete set of all documents and work product prepared or obtained by Contractor as of the date of such demand. Princeton University (or its designees, agents or representatives) shall at its own expense be entitled to inspect, review, and copy any such documents on the Site. In the event of Contractor's failure to comply with Princeton University's demand hereunder, the parties hereby agree that any remedy at law would be inadequate and Princeton University shall be entitled to appropriate injunctive and other equitable relief, including without limitation the remedy of specific performance.

**CLAUSE K5 RETENTION OF DOCUMENTS ON SITE**

For any documents that must be uploaded to the Capital Project Management System (CPMS), before they are so loaded, Contractor shall maintain at the Site, on a current basis, all such documents (whether hardcopy or electronic) and samples that arise out of this Contract or the Work, including all design documents, shop drawings, samples, purchase orders, Subcontracts, documents identifying materials, equipment, applicable handbooks, and commercial and technical standards and revisions thereto, all of which shall be the property of Princeton University. Any documents (whether hardcopy or electronic) and samples maintained by Contractor at the Site, whether or not uploaded to the CPMS, including, without limitation, the list in the preceding sentence, shall be the property of Princeton University. Without limitation to any other obligations of Contractor in the Contract regarding such, prior to final payment or upon any earlier demand by Princeton University at any time, including without limitation upon any termination of the Contract by Princeton University, all documents (whether hardcopy or electronic and whether copies or originals) and samples at the Site or otherwise in Contractor's possession and which are not uploaded to the CPMS shall be delivered to Princeton University, and Contractor (at its sole expense) may make and keep a copy of such the documents and any extra samples.

**CLAUSE K6 CONTRACTOR'S RECORDS/RIGHT TO AUDIT**

(a) The Contractor is required to retain records that shall include, but not be limited to, copies of all plans, specifications, submittals, bids/proposals, correspondence, email, minutes, memoranda, audio or visual 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, relating to the Project, its design, or its construction, or all costs relating thereto, or have any bearing on or pertain to any matters, rights, duties or obligations under or covered by the Contract. The Contractor shall retain all records relating to this Contract until the expiration of ten (10) years after Substantial Completion, or six (6) months after final resolution (by non-appealable judgment or settlement) of any disputes, whichever may be later. Upon the request of



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Princeton University, and by no later than three (3) days from written notice, the Contractor shall make all such records available during normal business hours to Princeton University and its authorized representative(s) or to any state, federal or other regulatory authority. In the event that Contractor receives any request in any manner or medium for any records relating to the Contract, the Work or the Project, Contractor 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 Contractor's records at its own expense, within adequate work space at the Contractor's facilities. Failure by the Contractor to supply substantiating records shall be reason to exclude the related costs from amounts which might otherwise be payable by Princeton University to the Contractor pursuant to the Contract.

(b) All Change Orders and Change Order Requests whether approved or not, including, without limitation, lump sum and stipulated sum Change Orders, will be subject to audit for the purpose of verifying that the pricing of the Change Order or Change Order Request is in accordance with the provisions of this Contract.

### **CLAUSE K7 CONFIDENTIAL INFORMATION**

The Contractor shall maintain the confidentiality of information designated as confidential by Princeton University, as well as any data and information that the Contractor 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 Contractor to carry out its Work or to effectuate any term or provision of the Contract, including without limitation any mediation or litigation to enforce this Contract; (ii) disclosures to Contractor'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 Contractor 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 Contract. 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 Contract conveys any ownership rights to the Contractor. Contractor shall similarly obligate any and all persons and/or entities to whom such information is necessarily disclosed hereunder, including without limitation its Subcontractors, to maintain said information in strict confidence in conformance with the terms of this Clause K7. Contractor agrees to be liable for any breach of this confidentiality obligation by any of its Subcontractors or their respective employees or representatives. Contractor 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 Clause K7 shall survive any termination of the Contract. At Princeton University's request, Contractor and any of its Subcontractors and their employees or agents shall execute Princeton University's standard form of nondisclosure agreement.

### **CLAUSE K8 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 Contractor (and Subcontractors, if applicable) shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability. Contractor also warrants that it will comply with all applicable executive orders, and federal, state, and local laws, regulations, and rules, and Princeton University policies, as appropriate, relating to nondiscrimination, equal employment opportunity, and affirmative action.

### **CLAUSE K9 ENTIRE CONTRACT**

This Contract represents the entire and integrated agreement between Princeton University and Contractor, and supersedes all prior negotiations, representations, or agreements, either written or oral. Except for Princeton University's right to unilaterally issue a Disputed Change Order (as defined in and pursuant to Section H) the Contract Documents may be changed, modified, or amended only by a written Modification signed by both parties.



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### CLAUSE K10 INTERPRETATION

(a) This Contract was negotiated by the Parties and their respective counsel. Accordingly, the maxim that this Agreement shall be construed against the party who drafted it shall not apply to the interpretation of this Agreement or any of the Contract Documents.

(b) Severability. In the event that any term or provision, or part thereof, of any of the Contract Documents is held to be 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.

(c) Any approvals or authorizations by Princeton University shall be required to be in writing and shall be subject to Princeton University's sole discretion unless such discretion is otherwise expressly restricted by a particular provision. Accordingly, the fact that a modifier expressly setting forth that Princeton University's approval or authorization is in its sole discretion is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### CLAUSE K11 EXECUTION/COUNTERPARTS/ELECTRONIC COPIES

(a) This Contract shall not be effective unless and until the Agreement (Part I) is signed by all parties. This Contract may be executed by the parties individually in counterparts, and all of the counterparts when taken together shall constitute one single instrument of agreement. For the purpose of this Contract an electronic PDF copy of a signature shall be deemed an original, and delivery may be by email of the same.

## SECTION L -- TERMS & CONDITIONS FOR GUARANTEED MAXIMUM PRICE (GMP) TYPE CONTRACTS AND COST PLUS FIXED FEE (CPFF) TYPE CONTRACTS

### CLAUSE L1 SUBCONTRACTS AND OTHER AGREEMENTS

(a) Subcontracts and other agreements involving amounts not in excess of Ten Thousand Dollars (\$10,000.00) or such other amount as Princeton University may designate from time to time (including multiple Subcontracts and agreements with the same or affiliated entities for similar work which, when taken together, are worth no more than \$10,000.00) may be awarded without the prior approval of Princeton University. This does not include changes in the Work and/or the Contract. All other Subcontracts and purchase orders shall be awarded according to the following procedure:

- (1) Contractor shall recommend to Princeton University any potential Subcontractors and suppliers for approval. Contractor shall invite bids from, and enter into contracts and material orders with, only those Subcontractors and suppliers who have first been approved by Princeton University.
- (2) Contractor shall prepare, and provide to Princeton University for review if requested, properly assembled Subcontractor solicitation packages consisting of, but not limited to, the following:
  - (i) An "invitation to bid" form containing project name, location, and description; Contractor name, address and contact; Architect/Engineer name and contact; pre-bid conference date and location; bid due date; de-scope (interview) meeting date(s); bidding procedures including the use of any electronic procurement or bidding systems or software as subject to Princeton University's prior written approval; documents pick-up or delivery information; base bid(s), alternates and unit price requirements.
  - (ii) Applicable attachments including contract documents (Drawings and Specifications); qualification statement; Subcontractor agreement form; preliminary billing schedule; stored materials request for payment form; preconstruction schedule; current construction schedule; change order procedures and mark-up; waiver of liens form.
  - (iii) A scope of work document listing Subcontractor responsibilities derived from the Contract as well as Project specific requirements.
- (3) Except as provided for in paragraph (a) and its subparagraph (a)(4) herein, all Subcontracts and purchase orders shall be awarded on a competitive basis using the following procedures:
  - (i) The Contractor shall solicit an appropriate number of Subcontractors or suppliers to obtain a minimum of three (3) bids.

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- (ii) The Contractor shall address substantive questions and clarifications that arise during the bidding process by formal written addendum issued to all bidders. Verbal communication shall be discouraged.
- (iii) For each solicitation, the Contractor shall establish a firm date, time, location or method for submission of bids. E-procurement by electronic bidding systems or software may be allowed subject to Princeton University's prior written approval. Bids shall be submitted in sealed envelopes or in a secure electronically sealed manner, as approved by Princeton University. No other form of bid submission is allowable without prior written approval from Princeton University. The Contractor shall conduct either physical private bid openings or receive and open bids pursuant to e-procurement procedures previously approved in writing by Princeton University, and, if opening physical bids, shall provide ample notification to Princeton University in advance of such bid openings to afford Princeton University an opportunity to attend. If opening physical bids, the Contractor shall record all bids received on a summary form that shall be signed by all persons in attendance. If obtaining bids by a pre-approved e-procurement system or software, Contractor shall strictly follow all procedures as approved by Princeton University in advance so as to ensure the integrity of the bid process.
- (iv) The Contractor shall analyze all bids received and shall conduct bid review meetings for significant portions of the Work, or when otherwise determined necessary, with those firms who have a reasonable chance of being awarded the Subcontract or purchase order. The Contractor shall provide ample notice of such bid review meetings to afford Princeton University an opportunity to attend.
- (v) If updated bids are required subsequent to the bid review meetings, the Contractor shall establish a firm date, time, and location for submission of updated bids. Updated bids shall be submitted in a sealed envelope or in an electronically sealed/secure manner pursuant to any Princeton University pre-approved e-procurement system, software and protocol. No other form of bid submission is allowable without prior written approval from Princeton University. Opening of updated bids shall be in the same manner as (iii) above.
- (vi) The Contractor shall not negotiate further price adjustments (e.g., reductions) with the apparent successful bidder without prior written approval from Princeton University.
- (vii) The Contractor shall make a formal written recommendation to Princeton University for all Subcontracts and purchase orders that shall include, but not be limited to, the following:
  - Introduction presenting all of the pertinent information relating to the Project and the individual Subcontract or purchase order being awarded (i.e., Project title, Project location, description of Subcontract, relevant cost code, budget amount, etc.).
  - Bid Summary that recaps all bids received (i.e., list of bidders, bid opening amount, qualifications and adjustments for scope, final bid results, etc.).
  - Award recommendation (Including, name of Subcontractor, award amount, alternates, options, unit prices, labor rates, allowances, contingency holds, qualifications, clarifications, exclusions, etc. Additional supporting rationale is required for a recommendation of other than the low bidder. Include a statement that the bid of the recommended Subcontractor or supplier has been submitted in good faith and is fair and reasonable. Include a signature block for Princeton University approval.
  - Attachments. The Contractor shall attach copies of initial bids received from all bidders and any updates to the initial bids (i.e., revised bids, final bids, etc.).

- (4) With the prior written approval of Princeton University, for designated portions of the Work, the Contractor may negotiate with approved Subcontractors and suppliers for Subcontracts and material purchases without undergoing the formal bid process described in subparagraph (a)(3) herein. Contractor shall inform Princeton University of the results of the negotiations and provide Princeton University with the information that would otherwise be required if the designated portion of the Work were open to competitive bidding as described in subparagraph (a)(3).

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## CONSOLIDATED TERMS & CONDITIONS FOR CONSTRUCTION CONTRACTS

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- (5) When Princeton University has accepted the Contractor's recommendation for the award of any such Subcontract or other agreement, Contractor shall contract solely in its own name and behalf, and not in the name or behalf of Princeton University, with the specified Subcontractor or supplier.
- (6) If Princeton University refuses to accept the Contractor's recommendation for award, the Contractor shall make an alternate recommendation.
- (b) All Subcontracts shall, except as otherwise approved by Princeton in writing, be awarded on a lump sum fixed price basis.
- (c) All Subcontracts shall, so far as practicable, contain unit prices, labor rates and any other feasible formula for use in the determination of the costs of changes in the Work.
- (d) Contractor agrees to hold all Subcontractors, including all persons directly or indirectly employed by them, responsible for any damages due to breach of contract or any negligent act, and to endeavor diligently to effect recoveries of such damages and, where appropriate to remit the proceeds of those recoveries to Princeton University.
- (e) Contractor agrees to obtain Subcontractor certificates of insurance in accordance with Clause G1(a)(7).
- (f) The duties and requirements set forth in this Clause L1 are in addition to those set forth in Clause D2.

### CLAUSE L2 ON-GOING DOCUMENT REVIEW

The Contractor shall conduct ongoing review of the architectural, civil, mechanical, electrical, and structural Drawings and Specifications subsequent to the Notice to Proceed, and shall advise and make recommendations and perform value engineering with respect to such factors as construction feasibility, possible economies, availability of material and labor, time requirements for procurement and construction, and projected costs.

### CLAUSE L3 MONTHLY STATUS REPORTS

- (a) The Contractor shall prepare a monthly status report based on a template format provided by Princeton University that contains, without limitation to other requirements for same as may be provided elsewhere in the Contract, the following items:
  - (1) An executive summary consisting of a clear and concise statement of the Contractor's opinion of the state of the Project, a narrative of the project cost and schedule status, an outline of remedial action plans required by all team members to meet the project cost and schedule requirements and a narrative of the outstanding items of information or decisions that must be made to progress the Work.
  - (2) For GMP Type Contracts: A construction cost report that shows the approved budget, costs committed and paid do date, the anticipated cost for each budget line item and the variance of each budgeted line item and total to the anticipated cost.
  - (3) For CPFF Type Contracts: A construction cost report that shows the then-approved Target Price breakdown, costs committed and paid do date, the anticipated cost for each Target-Price line item and the variance of each budgeted line item and total to the anticipated cost.
  - (4) A significant risks/major issues list with assigned responsibility and planned date for required resolution.
  - (5) A summary of the commitments, anticipated items, and transfers against the Contractor's Construction Contingency within the GMP budget.
  - (6) A schedule report that compares the baseline schedule to the current version and an explanation of the variance between the schedules. Also include an action plan to recover any negative variance from the approved baseline, an explanation of how past productivity has influenced the updated logic and durations, and explanation(s) for the cause of any delays and the party responsible for the cost of the related recovery efforts.
  - (7) Monthly cash flow and manpower reports that compare an approved baseline to actual and projected cash flows and manpower forecasts. Also, include an explanation of the cause for any variance between the actual/current projections and the baseline.
  - (8) Progress photographs of the Project.
  - (9) Project metrics as deemed important by the entire team such as the number of outstanding shop drawings and RFI's, Architect/Engineer and Princeton University response time. Also, include a narrative of the metric data and its impact on the Project. Do not include the logs used to track this information.
  - (10) A summary of major outstanding quality issues including schedules and remedies to correct the conditions.

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## CONSOLIDATED TERMS & CONDITIONS FOR CONSTRUCTION CONTRACTS

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- (11) A summary of the follow-up actions taken from the previous month's reports and any outstanding issues that still require action and by which team members.
- (12) A summary of the posting of digital archiving documents to the Capital Project Management System including as-built drawings, record submittals, maintenance manuals, commissioning reports and warranty letters.

(b) The Contractor shall prepare and submit this report in an electronic format to the Project Manager no later than the fifth calendar day of the month following the reporting period. When applicable, the Contractor shall post the report as an Adobe Acrobat (\*.pdf) file on Princeton University's web-based project management application in accordance with Clause D3, Capital Project Management System - CPMS.

### CLAUSE L4 COST OF THE WORK - GMP CONTRACTS AND CPFF CONTRACTS

(a) The term "Cost of the Work" shall be defined as costs necessarily, reasonably and actually incurred by Contractor in connection with the proper performance of all of the Work and other obligations of the Contract and as hereinafter enumerated. Such costs shall be at rates not higher than the standard paid in the locality of the Work, except with the prior written consent of Princeton University, and shall include and be limited to only the following items in this Clause L4(a):

- (1) Wages and salaries paid to personnel directly employed by the Contractor to perform the Work in accordance with the following:
  - (i) Wages paid to field labor in accordance with applicable collective bargaining agreements or pursuant to a rate schedule agreed upon in advance by Princeton University and the Contractor.
  - (ii) Salaries or other amounts in accordance with a salary or rate schedule agreed upon in advance by Princeton University and the Contractor, paid to Contractor's personnel employed in any capacity and stationed at the field office.
  - (iii) Contractor's personnel engaged in expediting the production or transportation of materials or equipment and stationed at shops or on the road shall be considered as stationed at the field office and their salaries paid for that portion of their time spent on this Work.
  - (iv) Salaries or other amounts in accordance with a salary or rate schedule agreed upon in advance in writing by Princeton University and the Contractor, for Contractor's personnel while involved in engineering, expediting, procurement, purchasing, scheduling, shop drawing review and processing whether such personnel are stationed in the field office or the main office.
- (2) Costs paid or incurred by the Contractor for payroll taxes, insurance (long and short term disability, worker's comp, and general liability), contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, matching retirement plan contributions or contributions to an Employee Stock Ownership Plan, only if classified as a "qualified ERISA retirement plan," provided such costs are based on wages and salaries and included in the Cost of the Work under subparagraphs (1) and (2) above, subject to the limitations set forth in the Contract.
- (3) The portion of reasonable travel and subsistence expenses of Contractor or of its officers or employees incurred while traveling in discharge of duties connected with the Work, other than to and from the Project site, subject to the prior written approval of Princeton University.
- (4) Payments made by Contractor to Subcontractors for Work performed pursuant to Subcontracts that have been authorized by Princeton University under this Contract; provided, however, that notwithstanding any other terms of the Contract to the contrary, the costs of claims of Subcontractors (including without limitation claim preparation costs, claims consultant fees and attorneys' fees) shall not be paid as a Cost of the Work even if the subject matter of such claim is ultimately deemed a Cost of the Work, except for only for GMP Contracts, but only to the extent approved by Princeton University in writing in its sole discretion, and limited to payment from funds available in the Construction Contingency only, if any.
- (5) Cost of all materials, supplies and equipment incorporated in the Work, including costs of transportation and installation thereof. Costs of suitable, off-site storage with the prior written approval of Princeton University.
- (6) Sales, use, or similar taxes related to the Work and for which Contractor is liable imposed by any governmental authority, subject to the following provisions and limitations:
  - (i) Princeton University is exempt from New Jersey Sales Taxes (Exemption No. EO-210-634-501) and from New Jersey Excise Taxes (Exemption No. A-10839). Pursuant to N.J.S.A. 54:32B-8.22, these

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exemptions apply to all purchases by contractors, subcontractors, or repairmen of materials, supplies or services for the exclusive use in erecting structures or building on, or otherwise improving, altering or repairing Princeton University's real property. Contractor shall utilize this exemption to the fullest extent possible. Contractor shall not be reimbursed for any taxes paid subject to the aforementioned exemptions regardless of whether Contractor has paid such taxes.

- (ii) The Contractor shall place the exemption certificate number on invoices for materials incorporated in the Work and furnish copies of invoices to Princeton University. Upon completion of the Work, the Contractor shall file with Princeton University a notarized statement that all purchases made under the exemption certificate were entitled to be exempt. The Contractor shall pay legally assessed penalties for improper use of exemption certificate number, which costs shall be excluded as Costs of the Work.
  - (7) Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the Contractor's employees and used in self-performed work. Title to all equipment and materials shall pass to Princeton University no later than upon payment therefore, and Contractor shall prepare and execute all documents necessary to effect and perfect such transfer of title.
  - (8) Rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the Site of the Work for self-performed work, whether rented from Contractor or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof, at rental charges no higher than those prevailing in the area.
  - (9) Cost of removal of all debris including recycling and any related permits or handling fees.
  - (10) Costs incurred to provide site safety. Costs incurred due to an emergency affecting the safety of persons and property; provided, however, to the extent any cost referred to in this subparagraph is incurred by reason of the negligence or other fault of Contractor or any Subcontractor or sub-subcontractor or is reimbursable by insurance or otherwise, or is the responsibility of Contractor under Clause G2, then such costs shall be excluded from the Cost of the Work.
  - (11) Cost of premiums for all bonds which Contractor is required by the Contract to purchase and maintain or which Princeton University has the right to require Contractor to purchase and maintain, including bonds for Subcontractors as required by Princeton University or Contractor with Princeton University's prior approval.
  - (12) That portion of Contractor's liability and Subcontractor default insurance premiums that can be directly attributable to this Contract but limited in amount to the stipulated rates set forth in the Agreement (Part I of the Contract).
  - (13) Fees and assessments for the building permit and for other permits, licenses, and inspections for which the Contractor is required by the Contract to pay.
  - (14) All reasonable costs and expenditures necessary for the operation of the site office such as stationary supplies, blueprinting, furniture, fixtures, office equipment, and field computer services, provided that quantity and rates are subject to Princeton University's prior written approval.
  - (15) Cost of copies with prior written approval of Princeton University.
  - (16) Communication expenses such as local and long distance line charges (equipment installation provided by Princeton University at no charge to Contractor), cellular phone usage, personal data assistant (PDA) usage, expressage, messenger service, and similar petty cash items directly related to the Work subject to Princeton University's prior written approval.
  - (17) Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and/or any Subcontractor and only to the extent that the cost of repair or correction is not recovered or recoverable by the Contractor from insurance, sureties, Subcontractors, suppliers, or others, and, in the instance of a GMP Contract, with payment for such limited to payment from funds available in the Contingency, if any.
  - (18) Other costs necessarily, reasonably and actually incurred in the performance of the Work if and to the extent approved in advance in writing by Princeton University.
- (b) The Cost of the Work shall not include costs such as, but not limited to, the following:

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## CONSOLIDATED TERMS & CONDITIONS FOR CONSTRUCTION CONTRACTS

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- (1) Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work.
  - (2) Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as expressly included in paragraph (a) above.
  - (3) Contractor's overhead and general expenses except as may be expressly included in paragraph (a) above.
  - (4) Any costs, even if described as a Cost of the Work in paragraph (a) above, which are generally considered in the construction industry to be 'general conditions' costs unless such costs are expressly identified in the General Conditions Cost Itemization included as part of the GMP Breakdown and Basis Documents (Part III) of any GMP Contract or as part of the Target Price Breakdown and Basis Documents (Part III) of any CPFF Contract.
  - (5) For GMP Type Contracts, costs, if any, in excess of the GMP as set forth in and as may only be adjusted by the terms of the Contract by Change Orders signed by Princeton University.
  - (6) Cost of preconstruction services under separate contract.
  - (7) Legal expenses and fees of any kind incurred in prosecuting or defending any Claims, or third-party claims, whether and without limitation in mediation, litigation, arbitration or otherwise (including without limitation, legal expenses or fees incurred pursuant to Clause G2 indemnifying Princeton University and other Covered Parties).
  - (8) Cost of any gift, bonus, severance pay, payments to discretionary profit sharing plans, tuition reimbursement, allowance for home office overhead, or payroll processing charges paid to or associated with payments to Contractor's or Subcontractor's employees.
  - (9) All moving costs associated with the relocation of Contractor's personnel for the purpose of staffing the Project, except as approved by Princeton University in writing in advance.
  - (10) Cost of performing Work under any warranty or guarantee provided under or required by this Contract.
  - (11) Cost of any deductibles of any kind, including without limitation those incurred under the Contractor's Builder's Risk Insurance, any liability or other insurance required to be obtained and maintained by Contractor in connection with this Project or otherwise, or SDI deductibles.
  - (12) Cost of maintaining or storing records required under this Contract after Final Payment or earlier termination of this Contract.
  - (13) Costs excluded from the Cost of the Work under any other provision of the Contract.
  - (14) Any cost not expressly described in paragraph (a) above or otherwise excluded by any other terms or conditions of the Contract.
- (c) All cash discounts shall accrue to the Cost of the Work. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to the Cost of the Work, and Contractor shall endeavor to make provisions to secure same.



**CONTRACT NUMBER FC100#####**  
**CONSTRUCTION MANAGEMENT GMP CONTRACT**  
**FOR**  
**PROJECT TITLE**

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**PART III**  
**GMP BREAKDOWN AND BASIS DOCUMENTS**

**CONTRACT NUMBER FC100#####**  
**CONSTRUCTION MANAGEMENT GMP CONTRACT**  
**FOR**  
**PROJECT TITLE**

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**PART IV**  
**PROJECT SCHEDULE**